



CITY COUNCIL STAFF REPORT

MEETING DATE: August 18, 2004

**TITLE: AMENDMENT TO AGREEMENT WITH THE LAW
FIRM OF JORGENSEN, SIEGEL, McCLURE & FLEGEL, LLP**

RECOMMENDED ACTIONS:

Authorize the City Manager to execute an Amended Agreement with the law firm of Jorgenson, Siegel, McClure & Flegel, LLP.

EXECUTIVE SUMMARY:

On March 30, 2004, the City entered into an agreement with the law firm of Jorgenson, Siegel, McClure & Flegel, LLP, to provide general legal services. Said services include matters relating to the city's Below Market Rate Housing Program, land use issues and tort litigation. The current contract is insufficient to cover the fees and expenses necessary to continue representation of the City. Therefore, staff is recommending that Council approve the attached Amendment to Agreement increasing the contract amount to \$80,000. This amount should be sufficient to cover the anticipated fees and costs.

FISCAL IMPACT:

The cost of this Amendment to Agreement can be accommodated in the City Attorney's Office budget. No additional appropriation is necessary at this time.

Agenda Item # 1

Prepared By:

(Title)

Approved By:

**(Department
Director)**

Submitted By:

City Manager



CITY COUNCIL STAFF REPORT

MEETING DATE: August 18, 2004

TITLE: SECOND AMENDMENT TO AGREEMENT WITH THE STROMBOTNE LAW FIRM

RECOMMENDED ACTIONS:

Authorize the City Manager to execute a Second Amendment to Agreement with the Strombotne Law Firm.

EXECUTIVE SUMMARY:

On September 23, 2003, the City contracted with the Strombotne Law Firm to handle pre-litigation negotiations and, if necessary, initiate litigation against VBN Corporation. On November 3, 2003, the Strombotne Law Firm filed suit on behalf of the City against VBN Corporation and ABSG Consulting, Inc., for breach of contract and professional negligence regarding construction of the Community and Cultural Center. On January 21, 2004, the City Council authorized increasing the contract amount to \$40,000 to cover the anticipated fees and costs associated with the initial pretrial discovery in preparation for mediation.

A mediation was held on June 30, 2004. As the case did not settle at the mediation, it is necessary to conduct post-mediation discovery, including the possible retention of experts, in anticipation of trial. The current contract is insufficient to cover the fees and costs associated with the continuing litigation of this matter. Staff recommends that Council approve the attached Second Amendment to Agreement increasing the contract amount to \$100,000. This amount should be sufficient to cover pretrial fees and costs.

FISCAL IMPACT:

The cost of this agreement can be accommodated in the City Attorney's Office budget. No additional appropriation is necessary at this time.

Agenda Item #2

Prepared By:

(Title)

Approved By:

(Department Director)

Submitted By:

City Manager



CITY COUNCIL STAFF REPORT

MEETING DATE: August 18, 2004

SUBDIVISION SD 04-09: Mission View Dr.-Mission Ranch

RECOMMENDED ACTION(S):

Take no action, thereby concurring with the Planning Commission's decision regarding approval of the subdivision map.

EXECUTIVE SUMMARY:

A request for approval of a 22 lot subdivision map and a request for an open space easement on the 10 acre park along the southerly boundary of the Mission Ranch project located on the south side of Cochrane Road, east of Mission View Dr.

In January 2004, the Mission Ranch project received tentative map approval for Phases 7, 8 & 9 (38 lots) which consisted of 11 units in FY 2004-05, 15 units in FY 2005-06 and 12 units in FY 2006-07. The 38 lot subdivision approved at that time encompassed 9.2 acres. In March 2004 the project received 10 supplemental allotments for FY 2004-05 and 12 supplemental allotments for FY 2005-06.

The applicant has modified phase 7 of the project to incorporate 13 lots which were previously shown as part of phase 8. A 21 lot final map for phase 7 is currently in process. Phase 8 was previously 15 lots, but has now been redefined to include the 12 lots previously shown as phase 9. The new phase 9 (10 lots on 2.6 acres) is located on the south west corner of the intersection of Peet Rd. and Mission Avenida. The current subdivision request is for the redefined phase 8 and new phase 9. The subdivision map as submitted is in compliance with the RPD plan approved by the City Council in April 2002. The lot sizes and locations are each per the approved RPD.

As part of the current subdivision application request, the applicant requested consideration of the recordation of an open space easement along the entire 2000 ft. long southerly boundary of the project. The recordation of the easement would allow the project's southerly boundary to be considered developed for the purpose of the upcoming RDSCS competition. As an alternative to the open space easement requested by the applicant, the Planning Commission required that the 2000 ft. long (10 acre) park site be defined as a park/open space parcel on the tentative map. The tentative map approval of the 10 acre parcel would allow the southerly boundary of the project to be considered developed for the purposes of the RDSCS scoring.

The Planning Commission reviewed the proposed subdivision map on July 27, 2004. The Commission voted 6-0 (Weston absent) recommending Council approval of the revised tentative map for phase 8 & 9 of the Mission Ranch project.

The Planning Commission resolution, conditions of approval, and subdivision map are attached. The staff report for the subdivision is attached to the development agreement amendment request within this same agenda.

FISCAL IMPACT: No budget adjustment required.

Agenda Item # 3

Prepared By:

Senior Planner

Approved By:

Planning Manager

Submitted By:

City Manager



CITY COUNCIL STAFF REPORT

MEETING DATE: August 18, 2004

SUBDIVISION APPLICATION, SD-04-10: PEET – LUPINE

RECOMMENDED ACTION: Take no action, thereby concurring with the Planning Commission's decision regarding approval of the subdivision map.

EXECUTIVE SUMMARY: The applicant is requesting approval to subdivide an 8.252-acre portion of a 61-acre site for the construction of 15 units of an overall 90-unit single-family project referred to as Alicante Estates.

The Alicante Estates project is located at the northeast corner of Cochrane Road and Peet Road in an R-1(12,000)/RPD Zoning District. The project has already received approval for a 41-lot subdivision, consisting of 38 Measure P units plus 3 replacement units. Earlier this year, the applicant was awarded 15 additional units under the supplemental allotment distribution.

The 15-lot subdivision will be constructed over two phases of the Alicante Estates project (3 in FY 2005-06 and 12 in FY 2006-07). The proposed tentative map is consistent with the precise development plan approved for the project.

On July 27, 2004, the Planning Commission approved the subdivision request by a vote of 5-0-1 (one Commissioner absent), with two modifications: 1) Condition XII.E (page 9) of the Standard Conditions Checklist was modified to clarify that the condition applied only to structures whose total size exceeds 4500 sf, and 2) Conditions XXIII.9 and XXIII.11 (page 21) were modified to clarify the conditions were required unless otherwise approved by the Santa Clara Valley Water District. For the Council's reference, a copy of the approval resolution and tentative map is attached. The July 27 Commission staff report and draft minutes are attached to the Council report for the Alicante Estates development agreement amendment application.

FISCAL IMPACT: None. Filing fees were paid to the City to cover the cost of processing these applications.

Agenda Item # 4

Prepared By:

Associate Planner

Approved By:

Planning Manager

Submitted By:

City Manager



CITY COUNCIL STAFF REPORT

MEETING DATE: August 18, 2004

RESIDENTIAL DEVELOPMENT CONTROL SYSTEM (RDCS) 2004 QUARTERLY REPORT #2

RECOMMENDED ACTION(S):

Accept and File the RDCS Second Quarter Report for 2004

EXECUTIVE SUMMARY:

In accordance with Section 18.78.150 of the Municipal Code, the Community Development Department is required to review, on a quarterly basis, each proposed development which has received a Residential Development Control System (RDCS) allotment. The purpose of this review is to determine whether satisfactory progress is being made with processing of the appropriate plans with the Community Development Department.

The majority of the residential projects are proceeding according to approved development schedules. The following projects are classified as BEHIND SCHEDULE: Native Dancer-Quail Meadows (MMP-03-01), Tilton-Glenrock (MP-02-03), and Hill-Gera (MP-02-17).

The developers of the Tilton-Glenrock and Native Dancer-Schilling projects have indicated they will be submitting applications in the near future. Hill-Gera has a protest annexation hearing scheduled for tonight's meeting and is working through the annexation process. Once the application submittals have been received the projects will resume good standing.

During the first quarter monitoring period, RDCS projects have secured 76 additional building permits and completed construction of 63 homes.

As of this quarterly report, the projected population for the City of Morgan Hill, based on all dwelling units allocated to date, will be 38,377.

By a vote of 6-0, with one Commissioner absent, the Commission approved the Quarterly Report by minute action and recommended the same by the Council. A copy of the 2nd Quarterly Report for 2004 and the draft minutes of the July 27, 2004 Planning Commission meeting are attached for the Council's reference.

FISCAL IMPACT:

Preparation of this report was accomplished with monies from the Community Development Fund.

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Agenda Item # 5

Prepared By:

Planning Technician

Approved By:

Planning Manager

Submitted By:

City Manager



CITY COUNCIL STAFF REPORT
MEETING DATE: AUGUST 18, 2004

Agenda Item # 6

Prepared By:

**Recreation &
Community Services
Manager**

Submitted By:

City Manager

MONTEREY HIWAY SOCCER PARK UPDATE

RECOMMENDED ACTION(S):

Authorize the City Manager to enter into a memorandum of understanding with Monterey Soccer Foundation to provide \$979,000 towards the construction of the Monterey Highway Soccer Park.

EXECUTIVE SUMMARY:

The project is the 49.5acre site of the area known as the Sobrato School greenbelt adjacent to Monterey Hiway. The program includes 16 soccer fields, 870 parking spaces, modular restrooms and concession areas. Attached are a project description, draft conceptual plan, timeline and estimated costs as provided by the Monterey Soccer Foundation and Beals Alliance. The City of San Jose has agreed to this project with a right-of-refusal on 3 soccer fields for their City's recreational program needs.

Monterey Soccer Foundation group has now formed as a nonprofit. They are working on a funding plan for this project. The City of San Jose is paying for the EIR with a budget of \$300,000. The City of Morgan Hill has paid Beals Alliance \$21,000 for the preliminary conceptual plan work.

City of San Jose is willing to lease the fields to the Soccer Foundation for 25 years, with the newly formed Monterey Soccer Foundation group responsible for the development, operations and maintenance of the fields. Morgan Hill Unified School District has come to agreement on a fee and schedule for the use of their parking lots and fields according to the group.

At the last project meeting dated June 23 there were several critical path items discussed. San Jose agreed to begin the process for hiring an EIR consultant and they were to provide a timeline for a general plan amendment as required by the City of San Jose. Once the Soccer organization legally formed as a non-profit organization, the City of Morgan Hill was to enter into agreement regarding the \$979,000 funding arrangement. This is the point we are at presently.

According to the project timeline presented, it appears that the facility will begin construction no earlier than August 2005. The current lease with CYSA for the Soccer Complex at Condit concludes as of December 31, 2004. At that point, staff will come back to Council for direction if an extension is granted and the terms.

FISCAL IMPACT: This project is funded under Redevelopment Funds CIP Project Number 114000 in the amount of \$979,000 which reflects expenditures towards the development of the conceptual design from the initial \$1million budgeted.



CITY COUNCIL STAFF REPORT

MEETING DATE: August 18, 2004

APPROVAL OF IMPROVEMENT AGREEMENT FOR THE GRANARY

RECOMMENDED ACTION: Approve the attached Improvement Agreement and authorize the City Manager to sign the agreement of behalf of the City with Charles Weston and Lesley Miles.

EXECUTIVE SUMMARY:

This agreement is to guarantee the construction of off-site improvements at the Granary under development at 17500 Depot Street. (See attached location map.) The public improvements are required per section 12.02.050 of the Municipal Code. The estimated construction cost of the public improvements is \$62,733.

The applicant has furnished the City with the necessary documents and has made provision with the City to provide the necessary security guaranteeing the completion of public improvements prior to the issuance of the building permit. Staff recommends that City Council approve the attached Improvement Agreement and authorize the City Manager to sign on behalf of the City.

FISCAL IMPACT:

Development review for this project is paid for from development processing fees.

Agenda Item # 7

Prepared By:

Assistant Engineer

Approved By:

Public Works Director

Submitted By:

City Manager



CITY COUNCIL STAFF REPORT

MEETING DATE: August 18, 2004

APPROVAL OF IMPROVEMENT AGREEMENT FOR ST. CATHERINE'S DAY WORKER CENTER

RECOMMENDED ACTION: Approve the attached Improvement Agreement and authorize the City Manager to sign the agreement of behalf of the City with Charles Weston and Lesley Miles.

EXECUTIVE SUMMARY:

This agreement is to guarantee the construction of off-site improvements at St. Catherine's Day Worker Center under development at 17590 Depot Street. (See attached location map.) The public improvements are required per section 12.02.050 of the Municipal Code. The estimated construction cost of the public improvements is \$80,377.

The applicant has furnished the City with the necessary documents and has made provision with the City to provide the necessary security guaranteeing the completion of public improvements prior to the issuance of the building permit. Staff recommends that City Council approve the attached Improvement Agreement and authorize the City Manager to sign on behalf of the City.

FISCAL IMPACT:

Development review for this project is paid for from development processing fees.

Agenda Item # 8

Prepared By:

Assistant Engineer

Approved By:

Public Works Director

Submitted By:

City Manager



CITY COUNCIL STAFF REPORT

MEETING DATE: AUGUST 18, 2004

FINAL MAP ACCEPTANCE FOR ALICANTE PH. I (TRACT 9578)

RECOMMENDED ACTION(S):

- 1) Approve the final map, subdivision agreement and improvement plans
- 2) Authorize the City Manager to sign the Subdivision Improvement Agreement on behalf of the City
- 3) Authorize the recordation of the map and the Subdivision Improvement Agreement following recordation of the Development Improvement Agreement

EXECUTIVE SUMMARY:

Tract 9578 is a 25 lot subdivision located on the southeast corner of the Cochrane Road and Peet Road intersection (see attached location map). The developer has completed all the conditions specified by the Planning Commission in the approval of the Tentative Map on January 27, 2004.

The developer has furnished the City with the necessary documents to complete the processing of the Final Map and has made provisions with a Title Company to provide the City with the required fees, insurance and bonds prior to recordation of the Final Map.

FISCAL IMPACT:

Development review for this project is from development processing fees.

Agenda Item # 9

Prepared By:

Senior Civil Engineer

Approved By:

Public Works Director

Submitted By:

City Manager



CITY COUNCIL STAFF REPORT

MEETING DATE: *August 18, 2004*

AWARD OF CONTRACT FOR SIDEWALK ADDITION AT EDMUNDSON/MONTEREY PROJECT

RECOMMENDED ACTION(S):

1. Award contract to Link Construction Co., Inc. for the construction of the Sidewalk Addition at Edmundson/Monterey Project in the amount of \$63,120.
2. Authorize expenditure of construction contingency funds not to exceed \$6,312.

EXECUTIVE SUMMARY:

This project shall provide for the addition of approximately 5,750 sf of sidewalk and two driveways along Edmundson Avenue, as shown in the attached location map.

The bid opening was held on August 3, 2004 and the bids received are as listed below. The low bidder has performed work for the City of Morgan Hill in the past. Staff recommends award of the contract to Link Construction Co., Inc. The project shall begin in September, 2004 and be completed by October, 2004. Link Construction Co., Inc.'s bid is approximately 2% above the engineer's estimate of \$62,000.

Link Construction Co., Inc.	\$63,120
Granite Construction Co.	\$66,591
QLM, Inc.	\$94,748
Monterey Peninsula Engineering	\$137,440

FISCAL IMPACT:

The total contract cost for this project (Project #535004) is \$69,432 which includes a 10% contingency. Project will be funded through Project #229001 – Community Indoor Recreation Center and approximately \$53,500 will be reimbursed via a TDA Article 3 grant after project completion.

Agenda Item # 10

Prepared By:

Assistant Engineer

Approved By:

Public Works Director

Submitted By:

City Manager



CITY COUNCIL STAFF REPORT

MEETING DATE: January 22, 2003

APPROVE PAYMENT TO SANTA CLARA COUNTY FOR VEGETATION ABATEMENT ON CITY-OWNED PROPERTY

RECOMMENDED ACTION(S): Approve payment in the amount of \$40,156.72 for vegetation abatement in FY01/02.

EXECUTIVE SUMMARY:

This payment is pursuant to our contract with the County Fire Marshall for hazardous vegetation abatement on City owned property. The work performed by the County includes disking and handwork on the City's open space, Assessment District and RDA owned properties. There are approximately 292 acres which require abatement. Per our agreement the charges for these services include a reduced administrative fee of 75% of the cost of the contractor.

FISCAL IMPACT:

The current year's budget includes \$45,000 that was appropriated for the abatement of vegetation on City owned properties.

Agenda Item # 11

Prepared By:

Management Analyst

Approved By:

Department Director

Submitted By:

City Manager



CITY COUNCIL STAFF REPORT
MEETING DATE: AUGUST 18, 2004

**RESOLUTION APPROVING APPLICATION FOR 2005-06
FEDERAL SURFACE TRANSPORTATION PROGRAM FOR
STREET RESURFACING FUNDING**

RECOMMENDED ACTION(S): Adopt attached Resolution supporting the application for Federal Surface Transportation (STP) Program Funding for the 2005-06 Pavement Resurfacing Program.

Agenda Item # 12

Prepared By:

Deputy PW Director

Approved By:

Public Works Director

Submitted By:

City Manager

EXECUTIVE SUMMARY: The Santa Clara Valley Transportation Authority has issued a call for projects for the Federal Surface Transportation Program (STP) for Local Streets and Roads Rehabilitation for the funding cycles of 2005-06 and 2006-07. The goal of the program is to assure that "Metropolitan Transportation System" (MTS) roads are in good repair in Santa Clara County. Within the City of Morgan Hill only Cochrane Road from Monterey Road to 101 qualifies as a MTS roadway.

Staff has completed initial design for repair and resurfacing of Cochrane Road. The scope of work involves removal and replacement of localized pavement failure, placement of a 2" asphalt overlay including pavement reinforcing fabric, replacement of traffic detection loops, and striping. The cost for this work is estimated at \$383,000. The STP funding source requires a local funding match of at least 11.47% of the total project cost. However, the total STP funding available to Morgan Hill is \$282,000. Thus, the project will be funded as follows: \$101,000 local match and \$282,000 STP funding.

A complete application for STP funding must include an authorizing resolution approved by Council. This resolution is attached.

FISCAL IMPACT: The \$101,000 local matching funds are available in the 2005-06 CIP Budget as a part of the Pavement Resurfacing Program.

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AUTHORIZING THE FILING OF AN APPLICATION FOR FEDERAL SURFACE TRANSPORTATION PROGRAM FUNDING FOR THE 2005-2006 PAVEMENT RESURFACING PROGRAM AND COMMITTING THE NECESSARY NON-FEDERAL MATCH FOR THE PROJECT(S) AND STATING THE ASSURANCE OF CITY OF MORGAN HILL TO COMPLETE THE PROJECT

WHEREAS, the Transportation Equity Act for the 21st Century (TEA 21) (Public Law 105-178, June 9, 1998) and the TEA 21 Restoration Act (Public Law 105-206, July 22, 1998) continue the Surface Transportation Program (23 U.S.C. § 133); and

WHEREAS, the TEA-21 legislation will guide Surface Transportation Program until the TEA-21 Reauthorization bill is authorized; and

WHEREAS, pursuant to TEA-21, and the regulations promulgated thereunder, eligible project sponsors wishing to receive Surface Transportation Program grants for a project shall submit an application first with the appropriate metropolitan transportation planning organization (MPO), for review and inclusion in the MPO's Transportation Improvement Program (TIP); and

WHEREAS, the Metropolitan Transportation Commission is the MPO for the San Francisco Bay region; and

WHEREAS, the City of Morgan Hill is an eligible project sponsor for Surface Transportation Program; and

WHEREAS, the City of Morgan Hill wishes to submit an application to MTC for funds from the Surface Transportation Program in fiscal year 2005-06 and 2006-07 for the 2005-06 Pavement Resurfacing Program.

WHEREAS, MTC requires, as part of the application, a resolution stating the following:

- 1) the commitment of local matching funds of at least 11.47%; and
- 2) that the sponsor understands that the Surface Transportation Program funding is fixed at the programmed amount, and therefore any cost increase cannot be expected to be funded with Surface Transportation Program funds; and
- 3) the assurance of the sponsor to complete the project as described in the application, and if approved, as programmed in MTC's TIP; and
- 4) that the sponsor understands that funds must be obligated by June 30 of the year that the project is programmed for in the TIP, or the project may be removed from the program; and
- 5) that the sponsor has a MTC certified pavement management system (PMS).

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Morgan Hill that the City Manager is authorized to execute and file an application for funding under the Surface Transportation Program of TEA -21 Reauthorization in the amount of \$282,000 for 2005-06 Pavement Resurfacing Program; and

BE IT FURTHER RESOLVED that the City Council of the City of Morgan Hill by adopting this resolution does hereby state that:

- 1) the City of Morgan Hill will provide \$101,000 in non-federal matching funds; and
- 2) the City of Morgan Hill understands that the Surface Transportation Program funding for the project is fixed at \$282,000, and that any cost increases must be funded by the City of Morgan Hill from local matching funds, and that City of Morgan Hill does not expect any cost increases to be funded with Surface Transportation Program funds; and
- 3) the 2005-06 Pavement Resurfacing Program will be built as described in this resolution and, if approved, for the amount shown in the Metropolitan Transportation Commission (MTC) Transportation Improvement Program (TIP) with obligation occurring within the timeframe established below; and
- 4) The program funds are expected to be obligated by June 30 of the year the project is programmed for in the TIP.

BE IT FURTHER RESOLVED that the City of Morgan Hill is an eligible sponsor of projects in the Surface Transportation Program; and

BE IT FURTHER RESOLVED that the City of Morgan Hill is authorized to submit an application for Surface Transportation Program funds for the 2005-06 Pavement Resurfacing Program; and

BE IT FURTHER RESOLVED that there is no legal impediment to the City of Morgan Hill making applications for Federal STP Road Rehabilitation Program funds; and

BE IT FURTHER RESOLVED that there is no pending or threatened litigation which might in any way adversely affect the proposed project, or the ability of the City of Morgan Hill to deliver such project; and

BE IT FURTHER RESOLVED that a copy of this resolution will be transmitted to the MTC in conjunction with the filing of the application; and

BE IT FURTHER RESOLVED that the MTC is requested to support the application for the project described in the resolution and to program the project, if approved, in MTC's TIP.

PASSED AND ADOPTED by the City Council of Morgan Hill at a Regular Meeting held on the 18th Day of August, 2004 by the following vote.

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:

🍷 CERTIFICATION 🍷

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Resolution No. , adopted by the City Council at a Regular Meeting held on August 18, 2004.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

IRMA TORREZ, City Clerk



CITY COUNCIL STAFF REPORT

MEETING DATE: August 18, 2004

Agenda Item # 13

Prepared By:

Asst. to the City Mgr.

Submitted By:

City Manager

YEAR END REPORT ON 2003-04 WORKPLAN

RECOMMENDED ACTION:

Accept report.

EXECUTIVE SUMMARY:

Attached is the year-end report on the Fiscal Year 2003-04 workplan. As you know, the workplan is comprised of special projects undertaken by departments that are beyond regular and routine responsibilities. Several of the high-priority projects identified by Council are included in the workplan, as are major construction projects such as the Aquatics Center and the new Police Facility, and other important capital improvement program projects.

Overall, 40% of the 2003-04 workplan projects were completed ahead of schedule or on time. Forty-four percent of the projects were late, while 16% are on hold. This is an improvement over last year, when 35% of all projects were early or on time, 47% were late and 18% were on hold.

Several factors affect whether or not a given project was completed on schedule. In some cases, new priorities or direction emerged which impacted project delivery. In other cases, projects were affected by the actions of outside entities. In addition, fiscal constraints have affected our human resources, with some budgeted staff positions not being filled with regular staff. Contract workers have filled some vacancies temporarily, but other vacancies have remained.

While most projects were not completed on the timeline originally envisioned, most projects were completed. With the advent of a new fiscal year and the 2004/05 workplan, we will continue to strive to increase the number of workplan projects completed on time, and will report to the Council quarterly on our progress.

FISCAL IMPACT:

No budget adjustment required.



CITY COUNCIL STAFF REPORT

MEETING DATE: *August 18, 2004*

APPROVAL OF ANNUAL LANDSCAPE MAINTENANCE SERVICES AGREEMENT FOR THE COMMUNITY/ CULTURAL CENTER AND AQUATICS CENTER

RECOMMENDED ACTION(S):

1. Approve annual landscape maintenance agreement for the Community/Cultural Center and the Aquatics Center.
2. Authorize the City Manager to execute the agreement on behalf of the City.

EXECUTIVE SUMMARY: Request for Proposals were sent to several vendors and advertised in the newspaper. The proposal opening was held July 8, 2004. The proposals received are listed below.

FloraTerra Landscape Maintenance	\$27,000
New Image Landscape Company	\$40,740

The scope of work includes: turf maintenance; weed control; pesticide application; maintenance of perennials, shrubs, trees, and groundcover; ornamental rose maintenance and care; and daily clean-up. The contract period is estimated to begin September 1, 2004. FloraTerra has served the City for the past two years at the Community/Cultural Center. Staff recommends awarding the contract to Flora Terra Landscape Maintenance.

FISCAL IMPACT: Funding exists for the first year of this agreement in the FY 2004-05 budget.

Agenda Item # 14

Prepared By:

Management Analyst

Approved By:

Department Director

Submitted By:

City Manager



CITY COUNCIL STAFF REPORT

MEETING DATE: August 18, 2004

AMEND CONTRACT FOR THE TENANT IMPROVEMENTS BY TRI-SIGNAL INTEGRATION, INC. FOR THE NEW POLICE FACILITY

RECOMMENDED ACTION(S):

- 1) Authorize the City Manager to amend and approve an additional Purchase Order for the purchase and installation of card readers, closed circuit TV, Fire and Security Alarm systems purchased for the tenant improvements at the new police facility.

EXECUTIVE SUMMARY:

In July '03 the council awarded a building contract located at 16200 Vineyard Blvd. for the future Morgan Hill Police Department. The Council also approved the purchase price and the estimated tenant improvements cost to complete the project. Construction has begun and equipment that is provided and installed by the vendor needs to be purchased immediately to avoid any delay in the projects completion.

Part of the security of the police facility, externally and internally, requires controlled entrances and exits to ensure the safety of all personnel and control of unauthorized personnel within the facility. As part of the booking process and facility security, closed circuit cameras at various locations are necessary to maintain secured areas.

Once the purchased equipment was installed, there were some design issues and additional equipment needed to meet the departments' needs. Exhibit "B" lists the change orders that were generated for the additional equipment along with change orders for deduction of equipment which was not needed.

The original purchase order was for \$174,894.00. The additional costs reflected in the change orders total \$38,016.00. Total cost for this portion of the project was \$212,910.00.

FISCAL IMPACT:

The funds set aside for this portion of the project are reserved under the FF & E funds.

Agenda Item # 15

Prepared By:

Lt. Terrie Booten

Approved By:

Chief B. Cumming

Submitted By:

City Manager



CITY COUNCIL STAFF REPORT

MEETING DATE: AUGUST 18, 2004

APPROVE FIRST AMENDMENT TO ARCHITECTURAL CONSULTANT AGREEMENT FOR INDOOR RECREATION CENTER

RECOMMENDED ACTION(S):

1. Authorize City Manager to amend Noll & Tam's consultant agreement for an additional \$35,000 for FF&E selection, specification and drawings and to revise the consultant's scope of work for architectural services needed in lieu of LEEDS design, subject to City Attorney review.

EXECUTIVE SUMMARY:

The consultant agreement for the Morgan Hill Indoor Recreation Center was awarded to Noll and Tam Architects by the Redevelopment Agency at their November 20, 2002, meeting in the amount of \$1,765,300. Included within that agreement was \$99,580 for LEEDS design services in the design development and construction document phase. During the Schematic design phase the additional construction costs to obtain LEEDS certification were identified. The Council sub-committee recommended, and Council agreed, that at that time the project cost could not be increased to obtain LEEDS certification. It was agreed to build an efficient building with the LEEDS intent but not to obtain LEEDS certification.

Staff is requesting a first amendment to Noll and Tam's agreement in the amount of \$35,000. This amendment is to provide interior fixture, furniture and equipment design, selection and specifying. Noll and Tam will provide drawings and specifications necessary in order for the City to receive bids from selected dealers. Noll and Tam's services also include assistance in bidding the work, services during the installation phase as well as providing a punch list to the dealer upon completion. This amount is included in the overall budget.

Staff is also requesting authorization to use \$74,300 of the LEEDS design fee for other design purposes. The fees will be used to provide the following services: 1) Building commissioning services to insure all systems are functioning efficiently and programmed correctly, 2) Electrical engineering required to provide for a future emergency generator in order to use the building for emergency situations if the City finds it necessary, 3) Consulting fees for Chuck Davis, FAIA during the Construction Document and Contract Administration phase of the project, and 4) Additional community meetings required of Noll and Tam. The remainder of the LEEDS design fee (\$28,280) will be kept as a design fee contingency.

FISCAL IMPACT:

There is no fiscal impact to the project. The fees for the services are included within the overall budget.

Agenda Item # 16

Prepared By:

Sr. Project Manager

Approved By:

BAHS Director

Submitted By:

City Manager



CITY COUNCIL STAFF REPORT
MEETING DATE: AUGUST 18, 2004

**APPROVE AUDIOVISUAL CONSULTANT AGREEMENT
FOR INDOOR RECREATION CENTER**

RECOMMENDED ACTION:

1. Authorize City Manager to negotiate, prepare and execute the professional services agreement for audiovisual consultant, Lewitz and Assoc. for consulting required at The Indoor Recreation Center, subject to review and approval by the City Attorney.

EXECUTIVE SUMMARY:

Council authorized staff to direct the architects for the Indoor Recreation Center to proceed into construction documents on April 7, 2004. Part of the fixture, furniture and equipment budget is for the City to provide the paging, audiovisual and a sound reproduction system. The center also requires infrastructure for cable TV system. Lewitz and Associates successfully consulted with the City on the Community Playhouse Project.

Lewitz and Associates consulting services will include preparation of guidelines and criteria, narrative functional descriptions and cost estimates as well as design services and preparation of detailed construction documents and specifications to be included within the contractor's bid documents. Also included are recommendations for architectural integration of sound and audiovisual elements. Their firm will assist with clarification during bidding, provide site observation of audiovisual systems elements during construction and conduct an audiovisual system checkout at the completion of the installation. The professional fee for the consultant's services will be \$31,340.

FISCAL IMPACT:

There is no fiscal impact to the project. The fees for the services are included within the overall budget.

Agenda Item # 17

Prepared By:

Sr. Project Manager

Approved By:

BAHS Director

Submitted By:

City Manager



CITY COUNCIL STAFF REPORT
MEETING DATE: AUGUST 18, 2004

Agenda Item # 18

Prepared By: _____

Deputy City Clerk _____

Approved By: _____

City Clerk _____

Submitted By: _____

City Manager _____

ADOPT ORDINANCE NO. 1685, NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO ORDINANCE NO. 1487, NEW SERIES, TO AMEND THE DEVELOPMENT AGREEMENT FOR APPLICATION MP-97-22: SPRING – MALONE/FILIPOWICZ TO ALLOW FOR A ONE YEAR EXTENSION OF TIME FOR A SINGLE CUSTOM LOT BUILDING ALLOTMENT RECEIVED IN THE 1998-99 RDCS COMPETITION. (APN 767-53-012)

RECOMMENDED ACTION(S):

Waive the Reading, and **Adopt** Ordinance No. 1685, New Series, and **Declare** That Said Title, Which Appears on the Public Agenda, Shall Be Determined to Have Been Read by Title and Further Reading Waived.

EXECUTIVE SUMMARY:

On July 7, 2004, the City Council Introduced Ordinance No. 1685, New Series, by the Following Roll Call Vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.

This item was scheduled for adoption at the regular meeting of July 21, 2004, but due to a failure by the local newspaper to publish the legal notification, the Council was required to continue the Adoption of this Ordinance to their next regularly scheduled meeting, which was August 18, 2004.

FISCAL IMPACT:

None. Filing fees were paid to the City to cover the cost of processing this application.

ORDINANCE NO. 1685, NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO ORDINANCE NO. 1487, NEW SERIES, TO AMEND THE DEVELOPMENT AGREEMENT FOR APPLICATION MP-97-22: SPRING – MALONE/FILIPOWICZ TO ALLOW FOR A ONE YEAR EXTENSION OF TIME FOR A SINGLE CUSTOM LOT BUILDING ALLOTMENT RECEIVED IN THE 1998-99 RDCS COMPETITION. (APN 767-53-012)

THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. The City Council has adopted Resolution No. 4028 establishing a procedure for processing Development Agreements for projects receiving allotments through the Residential Development Control System, Title 18, Chapter 18.78 of the Municipal Code.

SECTION 2. The California Government Code Sections 65864 thru 65869.5 authorizes the City of Morgan Hill to enter into binding Development Agreements with persons having legal or equitable interests in real property for the development of such property.

SECTION 3. the Planning Commission pursuant to Chapter 18.78.125 of the Morgan Hill Municipal Code, awarded 6 building allotments for FY 1999-2000 to application **MP-97-22: Spring-Malone**; and

SECTION 4. The City Council hereby finds that the development agreement amendment approved by this ordinance is compatible with the goals, objectives, policies, and land uses designated by the General Plan of the City of Morgan Hill.

SECTION 5. EXCEPTION TO LOSS OF BUILDING ALLOCATION. The project applicant has, in a timely manner, submitted necessary planning applications to pursue development. Based on the findings required in Section 18.78.125 of the Municipal Code, the City Council hereby approves the development agreement amendment to allow for a one-year Exception of Loss of Building Allotment for the single Measure P unit, extending the deadline to commence construction from June 30, 2004 to June 30, 2005.

SECTION 6. Severability. If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

SECTION 7. Effective Date Publication. This ordinance shall take effect from and after thirty (30) days after the date of its adoption. The City Clerk is hereby directed to publish this ordinance pursuant to §36933 of the Government Code.

The foregoing ordinance was introduced at the regular meeting of the City Council of the City of Morgan Hill held on the 7th Day of July 2004, and was finally adopted at a regular

meeting of said Council on the 18th Day of August 2004, and said ordinance was duly passed and adopted in accordance with law by the following vote:

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:

ATTEST:

APPROVED:

Irma Torrez, City Clerk

Dennis Kennedy, Mayor

∞ CERTIFICATE OF THE CITY CLERK ∞

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. 1685, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 18th Day of August 2004.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE:_____

IRMA TORREZ, City Clerk



CITY COUNCIL STAFF REPORT
MEETING DATE: AUGUST 18, 2004

Agenda Item # 19

Prepared By:

Deputy City Clerk

Approved By:

City Clerk

Submitted By:

City Manager

ADOPT ORDINANCE NO. 1689, NEW SERIES

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO THE PRECISE DEVELOPMENT PLAN FOR THE DE PAUL (FORMERLY SAINT LOUISE) HEALTH CENTER INCORPORATING UP TO A 70-UNIT CONGREGATE CARE FACILITY, 94 UNIT ASSISTED LIVING FACILITY, A 6,050 SQUARE FOOT CHILD CARE FACILITY AND A 13,560 SQUARE FOOT COMMERCIAL OFFICE BUILDING. (APNs 728-031-005, 006, 012 & 013)
(ZA-04-02: COCHRANE-ASSISTED LIVING CENTER)**

RECOMMENDED ACTION(S):

Waive the Reading, and **Adopt** Ordinance No. 1689, New Series, and **Declare** That Said Title, Which Appears on the Public Agenda, Shall Be Determined to Have Been Read by Title and Further Reading Waived.

EXECUTIVE SUMMARY:

On July 21, 2004, the City Council Introduced Ordinance No. 1689, New Series, by the Following Roll Call Vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.

FISCAL IMPACT:

No budget adjustment required.

ORDINANCE NO. 1689, NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO THE PRECISE DEVELOPMENT PLAN FOR THE DE PAUL (FORMERLY SAINT LOUISE) HEALTH CENTER INCORPORATING UP TO A 70-UNIT CONGREGATE CARE FACILITY, 94 UNIT ASSISTED LIVING FACILITY, A 6,050 SQUARE FOOT CHILD CARE FACILITY AND A 13,560 SQUARE FOOT COMMERCIAL OFFICE BUILDING. (APNs 728-031-005, 006, 012 & 013) (ZA-04-02: Cochrane-Assisted Living Center)

THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY ORDAIN AS FOLLOWS:

- SECTION 1.** AMENDING THE PLANNED UNIT DEVELOPMENT ZONING DISTRICT. This ordinance hereby replaces the precise development plan established under Ordinance No. 1425, New Series.
- SECTION 2.** The incorporation of the congregate care, child care, and commercial office uses into the Planned Unit Development is consistent with the Zoning Ordinance and the General Plan since these uses are ancillary and supportive of the primary health center use within existing Planned Unit Development.
- SECTION 3.** The zone change is required in order to serve the public convenience, necessity and general welfare as provided in Section 18.62.050 of the Municipal Code.
- SECTION 4.** An environmental assessment has been prepared for this zoning amendment and is deemed complete, correct and adequate in accordance with state and local environmental guidelines. Based upon said study, a Mitigated Negative Declaration will be filed.
- SECTION 5.** The City Council finds that the proposed amendment and expansion of the Planned Unit Development Overlay District is consistent with the criteria specified in Chapter 18.18 of the Morgan Hill Municipal Code.
- SECTION 6.** The City Council hereby approves of the amended master development plan incorporating a 40-70 unit congregate care, a 94 unit assisted living facility, a 6,050 sq. ft. childcare facility and a 13,650 sq. ft. commercial office building as contained in that certain series of documents dated June 4, 2004, on file in the Community Development Department, entitled, "Morgan Hill Assisted Living Partners LLC" prepared by Hochhauser Blatter, Architecture and Planning.
- SECTION 7.** The City Council hereby approves of an amended PUD zoning boundary as shown on the attached Exhibit A.

SECTION 8. The approved development plan shall be subject to the following conditions:

1. If the childcare facility is located as shown in Alternative Master Site Plan (sheet A1.2.2 of June 4, 2004 submittal), the specific site plan, parking, circulation, landscaping and architecture shall be reviewed and approved by the Architectural Review Board. The Board has the authority to make final site plan modifications for the childcare facility if constructed within the "Future Ancillary Support Zone."

2. Development guidelines shall be provided for the entire PUD. The development guidelines shall be reviewed by the Architectural Review Board with final approval by the City Council prior to any Architectural and Site Review approvals granted for any development within the boundary of the PUD.

SECTION 8. Severability. If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

SECTION 9. Effective Date; Publication. This Ordinance shall take effect from and after thirty (30) days after the date of its adoption. The City Clerk is hereby directed to publish this ordinance pursuant to §36933 of the Government Code.

The foregoing ordinance was introduced at the regular meeting of the City Council of the City of Morgan Hill held on the 21st Day of July 2004, and was finally adopted at a regular meeting of said Council on the 18th Day of August 2004, and said ordinance was duly passed and adopted in accordance with law by the following vote:

AYES: **COUNCIL MEMBERS:**
NOES: **COUNCIL MEMBERS:**
ABSTAIN: **COUNCIL MEMBERS:**
ABSENT: **COUNCIL MEMBERS:**

ATTEST:

APPROVED:

Irma Torrez, City Clerk

Dennis Kennedy, Mayor

∞ CERTIFICATE OF THE CITY CLERK ∞

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. 1689, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 18th Day of August 2004.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

IRMA TORREZ, City Clerk

**CITY OF MORGAN HILL
SPECIAL CITY COUNCIL MEETING
MINUTES – JUNE 26, 2004**

CALL TO ORDER

Mayor Kennedy called the special meeting to order at 2:00 P.M.

ROLL CALL ATTENDANCE

Present: Council Members Carr, Sellers, Tate and Mayor Kennedy
Absent: Council Member Chang

City Council Action

CLOSED SESSIONS:

1.

CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION

Legal Authority: Government Code Sections 54956.9(b) & (c)
Number of Potential Cases: 2

OPPORTUNITY FOR PUBLIC COMMENT

Mayor Kennedy opened the Closed Session items to public comment. No comment being offered, the public comment was closed.

ADJOURN TO CLOSED SESSION

Mayor Kennedy adjourned the meeting to Closed Session at 2:02 P.M.

RECONVENE

Mayor Kennedy reconvened the meeting at 3:29 P.M.

CLOSED SESSION ANNOUNCEMENT

Mayor Kennedy announced there were no reportable actions.

ADJOURNMENT

There being no further business, Mayor Kennedy adjourned the meeting at 3:30 P.M.

MINUTES RECORDED AND PREPARED BY:

MOIRA MALONE, DEPUTY CITY CLERK



REDEVELOPMENT AGENCY

MEETING DATE: *August 18, 2004*

Agenda Item # 21

Prepared By:

BAHS Manager

Approved By:

BAHS Director

Submitted By:

Executive Director

DOWNTOWN PARKING RESOURCES MANAGEMENT PLAN

RECOMMENDED ACTION(S): Authorize the Executive Director to negotiate and execute a contract with DKS Associates in an amount not to exceed \$49,280, subject to Agency General Counsel review.

EXECUTIVE SUMMARY: The City's 2003 Downtown Plan identified the need to develop a parking resources and management plan. This task was included in the Downtown Work Plan adopted by the Council in May 2004.

On June 3, 2004, staff released a Request for Proposals (RFP) for a Downtown Parking Resources Management Plan. The RFP laid out several tasks including: assessing and updating the parking survey from the 2003 Downtown Plan, evaluating the condition of the existing public parking lots, developing a plan for parking lot identification and directional signs, evaluating time-limited parking and related enforcement issues, looking for opportunities to connect existing off-street parking lots, and developing short and long-term parking plans for the Downtown.

A total of three firms responded; one withdrew its proposal, leaving two firms. Both firms were interviewed. The Morgan Hill Downtown Association participated in the interview process and earlier in the preparation of the RFP.

Staff recommends contracting with DKS Associates. A copy of its scope of work is attached. Included in the scope of work is a limited parking duration and turnover study.

DKS is well qualified for this assignment and has performed similar work in the northern California City's of San Jose, Walnut Creek, Oakland, Salinas, and Santa Rosa. Staff was also impressed with their experience in working with stakeholder groups.

DKS estimates that it will take about five months to complete the plan.

FISCAL IMPACT: Sufficient funds have been budgeted for this project under the FY2004-2005 BAHS 317 account.

Attachment

U:\BAHS\STAFFRPT\ParkingResourcesManagementPlan8-18-04.doc

**CITY OF MORGAN HILL
JOINT SPECIAL AND REGULAR CITY COUNCIL
AND SPECIAL REDEVELOPMENT AGENCY MEETING
MINUTES – JULY 21, 2004**

City Council and Redevelopment Agency Action

At 6:00 p.m., City Clerk/Agency Secretary Torrez announced that the Council/Redevelopment Agency would not be meeting in closed session this evening and that the Council would be convening the meeting at 7:00 p.m.

CLOSED SESSIONS:

1.

CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION

Authority:	Government Code Sections 54956.9(b) & (c)
Number of Potential Cases:	4

CALL TO ORDER

Mayor/Chairman Kennedy called the special meeting to order at 7:00 p.m.

SILENT INVOCATION

PLEDGE OF ALLEGIANCE

At the invitation of Mayor/Chairman Kennedy, Charles Cameron, Library Commissioner, led the Pledge of Allegiance.

ROLL CALL ATTENDANCE

Present: Council/Agency Members Carr, Chang, Tate and Mayor/Chairman Kennedy
Late: Council/Agency Member Sellers

DECLARATION OF POSTING OF AGENDA

City Clerk/Agency Secretary Torrez certified that the meeting's agenda was duly noticed and posted in accordance with Government Code Section 54954.2.

PRESENTATIONS

Mayor Kennedy presented Frank Dutra, Advanced Machining Technologies and Charlene McIntosh, Comcast Cable, with Certificates of Recognition for attaining Green Business status and for their exemplary efforts in protecting the environment. In attendance was Gretchen Hefner of the Santa Clara County Green Business Program.

Mayor Pro Tempore Sellers entered and was seated.

CITY COUNCIL REPORT

Council Member Carr reported on the South County Regional Wastewater Authority (SCRWA), indicating that the City shares a wastewater treatment plant with the City of Gilroy. He noted that this facility recently celebrated a 20-year anniversary and that three employees working for this facility since its beginning were honored. He said that further discussions/actions will be undertaken regarding the facility's future needs. He said that SCRWA is working with the Regional Water Quality Control Board on some issues. He reported on the Economic Development Subcommittee. He stated that the Subcommittee is working on a couple of different items. He indicated that the Subcommittee will be returning to the Council with a recommendation on ways to address economic inhibitors, including changes that can be made to some of the City's policies that may be inhibitors to economic development. Another task given by the Council to this Subcommittee is the Walnut Grove PUD. He stated that the Subcommittee requested that the Planning Commission send a representative to attend the meetings to talk about a possible role for the Commission with the PUD. He said that a Planning Commissioner has met with the Subcommittee the past few meetings to talk about what role the Planning Commission should play in a City-sponsored PUD. He indicated that the Subcommittee has come up with a process, and that the City-sponsored PUD can now go before the Planning Commission in order to begin its discussions, community dialogue, and the framework for the PUD. He noted that this is a unique process for the City to initiate in the development of a PUD.

CITY MANAGER REPORT

City Manager Tewes noted that the City honored two green businesses. He said that one of things that allows a business to attain green business certification is water conservation. He stated that water conservation is more important now than ever, given the limitation of the City's domestic water supply, as some of the domestic wells are affected by the perchlorate contamination. As the City is at the hottest part of the summer and fire danger, he stated that the City needs to make sure that it has fire reserves available in its water system. It is staff's hope that citizens will think water conservation. He indicated that there are several water conservation tips on the City's website and that staff will be returning to the Council soon with more ideas on water conservation programs.

CITY ATTORNEY REPORT

City Attorney Leichter indicated that she did not have a report to present this evening.

PUBLIC COMMENT

Mayor/Chairman Kennedy opened the floor to public comment for items not appearing on this evening's agenda. No comments were offered.

City Council Action

CONSENT CALENDAR:

Mayor Kennedy indicated that items 2 and 9 will be pulled from the Consent Calendar and tabled. It was his understanding that they will be rescheduled for a future meeting date.

Action: *On a motion by Council Member Tate and seconded by Council Member Carr, the City Council unanimously (5-0) **Approved** Consent Calendar Items 1, 3-8, and 10-13 as follows:*

1. **SANTA CLARA COUNTY CITIES ASSOCIATION'S (SCCCA) JOINT ECONOMIC DEVELOPMENT POLICY COMMITTEE**

Action: *1) **Approved** the SCCCA's Formation of a New Standing Committee Called the Joint Economic Development Policy Committee (JEDPC); and 2) **Ratified** the Appointment of Mayor Kennedy to Represent the City on the JEDPC.*

3. **AMENDMENT TO AGREEMENT FOR LAND USE PLANNING CONSULTANT SERVICES**

Action: ***Approved** Amendment to Contract.*

4. **FINAL MAP APPROVAL FOR TUSCANY MEADOWS (TRACT 9500)**

Action: *1) **Approved** the Final Map, Subdivision Agreement and Improvement Plans; 2) **Authorized** the City Manager to Sign the Subdivision Improvement Agreement on Behalf of the City; and 3) **Authorized** the Recordation of the Map and the Subdivision Improvement Agreement Following Recordation of the Development Improvement Agreement.*

5. **LOT LINE ADJUSTMENT PARCEL MAP APPROVAL FOR SOUTH VALLEY DEVELOPERS, INC.**

Action: *1) **Approved** the Lot Line Adjustment Parcel Map, Including the Abandonment of a Storm Drain Easement and Reciprocal Ingress, Egress and Public Service Easement on the Property; and 2) **Authorized** the Recordation of the Map.*

6. **AWARD OF PROFESSIONAL SERVICES CONTRACT FOR CONSTRUCTION INSPECTION SERVICES FOR THE 2003-2004 STREET RESURFACING PROGRAM**

Action: ***Authorized** the City Manager to Execute a Consultant Agreement for Construction Inspection Services for the 2003-2004 Street Resurfacing Program with Harris and Associates for a Cost Not to Exceed \$32,310, Subject to Review and Approval by City Attorney.*

7. **AWARD CONTRACT FOR ANNUAL ASPHALT MAINTENANCE**

Action: ***Awarded** Contract to Granite Construction Company for the Annual Asphalt Maintenance in the Amount of \$37,600, Subject to Review and Approval by the City Attorney.*

8. **APPROVE PURCHASE ORDER FOR THE REPAIR AND REPLACEMENT OF METAL BEAM GUARDRAILS**
*Action: **Approved** Purchase Order to Chavez Fence Company for the Repair and Replacement of Metal Beam Guardrails in the Amount of \$22,150.*
10. **ADOPT ORDINANCE NO. 1686, NEW SERIES**
*Action: **Waived** the Reading, and **Adopted** Ordinance No. 1686, New Series, and **Declared** That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by title and Further Reading Waived; Title as Follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO DEVELOPMENT AGREEMENT, DA-03-11 TO INCORPORATE CHANGES IN THE ALLOCATIONS AND THE PHASING OF THE PROJECT FOR APPLICATION MP 02-07: CORY-SAN PEDRO PARTNERS (APN 817-11-061).***
11. **ADOPT ORDINANCE NO. 1688, NEW SERIES**
*Action: **Waived** the Reading, and **Adopted** Ordinance No. 1688, New Series, and **Declared** That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by title and Further Reading Waived; Title as Follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO THE PRECISE DEVELOPMENT PLAN APPROVED UNDER ORDINANCE NO. 1546, NEW SERIES, FOR THE TENNANT STATION SHOPPING CENTER LOCATED IN THE PUD DISTRICT ON THE SOUTHEAST CORNER OF THE INTERSECTION OF MONTEREY ROAD AND TENNANT AVENUE (APN's 817-06-039, 040 & 41).***
12. **MINUTES FOR SPECIAL CITY COUNCIL MEETING OF JULY 5, 2004**
*Action: **Approved** the Minutes as written.*
13. **MINUTES FOR SPECIAL CITY COUNCIL MEETING OF JULY 7, 2004**
*Action: **Approved** the Minutes as written.*
2. **ACCEPTANCE OF THE CITY OF MORGAN HILL POLICE FACILITY PROJECT**
*Action: On a motion by Mayor Pro Tempore Sellers and seconded by Council Member Tate, the City Council unanimously (5-0) **Tabled** this item.*
9. **ADOPT ORDINANCE NO. 1685, NEW SERIES**
*Action: On a motion by Mayor Pro Tempore Sellers and seconded by Council Member Tate, the City Council unanimously (5-0) **Tabled** this item.*

Mayor Kennedy noted that it was not yet 7:30 p.m. at which time the Council considers public hearing items.

***Action:** It was the consensus of the Council **to consider** items 19 and 20 at this time; followed by item 22.*

City Council Action

OTHER BUSINESS:

19. APPROVAL OF THE MITIGATION MONITORING AND REPORTING PLAN FOR THE INSTITUTE GOLF COURSE.

City Manager Tewes informed the Council that items 19 and 20 are related to the Institute Golf Course. He indicated that the Council has a request from the applicant that they be given the opportunity to review the mitigation monitoring plan and are, therefore, requesting that this matter be continued to a future date.

Mayor Pro Tempore Sellers stated that unless staff or the applicant believe that there is a problem to consider both items together, he felt that it made sense to schedule both agenda items for the Council's August 18, 2004 meeting.

City Attorney Leichter informed the Council that the City cannot approve the ordinance until the CEQA process has been finalized as listed under Item 19, the mitigation monitoring plan. Therefore, the adoption of the ordinance needs to follow the adoption of the mitigation monitoring and reporting plan.

Action: *On a motion by Mayor Pro Tempore Sellers and seconded by Council Member Tate, the City Council unanimously (5-0) **Continued** this item to August 18, 2004.*

20. ADOPT ZONING AMENDMENT ORDINANCE NO. 1687, NEW SERIES

Action: *On a motion by Mayor Pro Tempore Sellers and seconded by Council Member Tate, the City Council unanimously (5-0) **Continued** this item to August 18, 2004.*

City Council and Redevelopment Agency Action

OTHER BUSINESS:

22. EXTENSION OF EXCLUSIVE RIGHT TO NEGOTIATE AGREEMENT (ERN) WITH EL TORO BREWING

Director of Business Assistance and Housing Services Toy presented the staff report. He informed the Council that El Toro Brewing has met all requirements of the scheduled performance with the exception of securing financing. He stated that the applicant has indicated that he has submitted an application to Heritage Bank but that this bank has been undergoing personnel restructuring. Therefore, this places El Toro Brewing still at the loan application process. He indicated that the Economic Development Subcommittee (EDS) and staff have met and are recommending a 90-day extension to the exclusive right to negotiate under certain conditions: 1) the existing \$20,000 good faith deposit become non-refundable and would be applied toward the purchase price. He informed the Council that El Toro

Brewing has requested that in the event that they are unable to obtain construction financing, that they be allowed to discuss other financing options with the Agency prior to terminating the agreement and losing the \$20,000 as a non-refundable deposit. Mr. Toy stated that the EDS and staff approached El Toro Brewing to ask for an additional good faith deposit as a condition of the extension. El Toro Brewing stated that this would create a financial hardship since it would tie up the resources they needed to complete the design work necessary for the project. Further, since they are a small family run business, it would place an unnecessary hardship on their finances. 2) El Toro Brewing agrees to accept the property as is and to indemnify the Agency against any future adverse conditions. 3) Purchase price to be \$650,000. 4) El Toro Brewing will obtain ARB approval by October 20, 2004. Mr. Toy noted that these conditions are all within the recommended 90-day extension period. He stated that El Toro has stated that they would start talking to other lenders. He indicated that a requirement of the new exclusive right to negotiate requires that El Toro Brewing obtain preliminary financing within 45-days and funding commitment within 90-days. He clarified that the 90-day extension would not add time to the original process. He informed the Council/Agency Board that the applicant believes these terms were reasonable ones.

Mayor/Chairman Kennedy opened the floor to public comment. No comments were offered.

It was noted that Mr. Acevedo was not in attendance at this time and that, should Mr. Acevedo or his representative show up, the Council/Agency Board could reconsider the item.

Mayor Pro Tempore/Vice-chair Sellers noted that the Council/Agency Board selected El Toro Brewing because it was the best financial deal for the City. He indicated that there was concern raised by the other applicant that they could not match El Toro Brewing's proposal because they could not come up with a financing option. In reading El Toro Brewing's letter, he understands that it is perceived to be an administrative issue caused by the restructuring of the bank's organization that caused the applicant to be unable to process the loan. He expressed concern that if the entity is not able to receive financing, it could add three months in delay. He stated that he would be willing to move forward with the proposal before the Council/Agency Board this evening. However, should El Toro Brewing be turned down by a financial institute, it would be important that this be revisited by the Council/Agency Board, even if it is before the 90 days. If the City will be in a situation where the terms are changing, he felt that this needs to come back to the Council/Agency Board in order to consider whether or not to capitulate and/or change the terms and whether to continue to consider the exclusive right to negotiate. He felt that it was important that the City not wait 90-days and not assume that things will move along smoothly. He requested that this item be brought back to the Council/Agency Board if it turns out that the financial institutions are declining to participate.

Action: *On a motion by Council/Agency Member Tate and seconded by Council/Agency Member Chang, the City Council/Agency Board unanimously (5-0) **Authorized** the Executive Director to Prepare and Negotiate a 90-day Extension to the ERN with El Toro Brewing, Subject to Agency General Counsel Review.*

FUTURE COUNCIL-INITIATED AGENDA ITEMS

Council Member Chang indicated that the Regional Water Quality Control Board would be considering the South County Regional Wastewater Authority's permit on September 10, 2004. She indicated that the Council may be interested in attending this meeting or receiving a brief on the permit.

OTHER REPORTS

Mayor Kennedy indicated that the Morgan Hill Community Health Foundation held a meeting Monday evening. He noted that the Council will be discussing an item relating to an assisted care facility later on this agenda. He reported that the Daughters of Charity have made good progress with the former St. Louise Hospital and medical office building. He stated that there are now five doctors who are practicing in the medical office building, including a cardiologist, an internist, and a neurosurgeon. Also, Fritter & Shultz Physical Therapy is due to open in approximately two weeks. He said that the Daughters of Charity plan to open what was once the emergency room facility as an urgent care facility that will include an MRI, CT scan and imaging, and laboratory facilities. Their long term plans are to reopen the surgery suites for ambulatory surgery. He stated that he and Mayor Pro Tempore Sellers were encouraged by the progress that the Daughters of Charity have made in getting the facility open. He indicated that the Council has worked hard to preserve the facility for medical services and encouraged the community to support the doctors and medical services that have located in the facility.

City Council Action

PUBLIC HEARINGS:

14. ZONING AMENDMENT, ZA-04-07: DIGITAL-VENTURE PROFESSIONAL CENTER.

Planning Manager Rowe presented the staff report, indicating that this application was scheduled to be considered by the Planning Commission at their July 13 meeting. However, the applicant requested that the Commission's review of the application be continued to July 27 in order to give them time to review the traffic analysis. He indicated that the applicant had some questions about the traffic analysis and adjustments to some of the assumptions of the traffic report and potential traffic impact mitigation measures. As this item has been continued to the Planning Commission's July 27 meeting, staff recommended that the Council continue the public hearing to its July 28 meeting.

Mayor Pro Tempore Sellers inquired whether there was enough time to resolve the issues between the Planning Commission meeting and the City Council meeting for the applicant to adequately prepare and evaluate the traffic analysis.

Planning Manager Rowe said that although the meetings are back to back, staff will present an oral report to the City Council with the recommended action of the Planning Commission. If there is a need to amend the documents based on the Commission's decision, staff would report them to the Council at the July 28 meeting.

Mayor Kennedy opened the public hearing. No comments were offered.

Action: *On a motion by Mayor Pro Tempore Sellers and seconded by Council Member Tate, the City Council unanimously (5-0) **Continued** the Public Hearing to the meeting of July 28, 2004.*

Mayor Kennedy indicated that there has been a request to consider item 17 at this time.

Action: *It was the consensus of the City Council to consider item 17 at this time.*

17. ASSESSMENT OF HAZARDOUS VEGETATION MANAGEMENT PROGRAM CHARGES – Resolution No. 5834

Mayor Kennedy noted that this item has been broken up into four sections.

Council Member Chang indicated that she has a conflict with action item 17a and therefore would recuse herself from this item. She excused herself from the Council Chambers.

Assistant to the City Manager Dile presented the staff report relating to the final step in the 2004 hazardous vegetation program. She recommended that the Council approve the final report from the County Fire Marshal's office which identifies all properties that have had weed abatement work performed by the County's contractor. She indicated that the adoption of the resolution would enable the charges associated with the weed abatement work to be placed on the tax assessment this fall.

Mayor Kennedy opened the public hearing.

Ike Rosenpor indicated that he received a letter from the City of Morgan Hill stating that he has not cut the grass on his property located on Warren Avenue, and that he would be charged for this service via his property tax. He indicated that he bought the property 26 years ago. Prior to purchasing the property, he came to the City and inquired as to the status of the construction of Santa Teresa Boulevard which was proposed to go through his property. City staff advised him that within the next five years Santa Teresa Boulevard would be constructed. He indicated that the property was zoned commercial. After 3-4 years, the City changed the zoning, noting that five years have gone by without the construction of Santa Teresa Boulevard. He indicated that he has visited City Hall many times and sent several letters and that his attorney has even sent letters to the City. He said that his attorney and he have been ignored. He has not been advised by the City how the lot can be developed. He stated that all he is doing with his property is paying property taxes. He requested that he be advised what he is supposed to do with the lot and be given permission to build on the lot, or subdivide the portion of land that Santa Teresa would go through.

No further comments being offered, the public hearing was closed.

City Attorney Leichter indicated that she is familiar with Mr. Rosenpor's situation. She said that she would be happy to contact him. It was her belief that his comments related to whether or not his property would be taken in order to build Santa Teresa Boulevard and not to the actual weed and vegetation abatement control. If the Council would like the recitation of the abatement control, the Fire

Marshal's Office is prepared to do so. With regard to the other matters, she indicated that staff would meet with the property owner to see if the City can give him an answer.

Mayor Kennedy agreed that it sounds as though Mr. Rosenpor's is an issue of property ownership and the status of the property (e.g., what the property can be used for) rather than the weed abatement issue that this hearing is about. He informed Mr. Rosenpor that the Council will ask the City Attorney to meet with him.

Action: *On a motion by Mayor Pro Tempore Sellers and seconded by Council Member Tate, the City Council, on a 4-0 vote with Council Member Chang absent, **Confirmed** Section A of the Final Report on the 2004 Hazardous Vegetation Program.*

Mayor Kennedy stated that he has a conflict with item 17b as he resides within 500 feet of the action. Therefore, he would step down from this action item.

Council Member Chang resumed her seat on the Dias.

Action: *On a motion by Council Member Tate and seconded by Council Member Carr, the City Council, on a 4-0 vote with Mayor Kennedy absent, **Confirmed** Section B of the Final Report on the 2004 Hazardous Vegetation Program.*

Mayor Kennedy resumed his seat on the Dias.

Action: *On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the City Council unanimously (5-0) **Confirmed** Section C of the Final Report on the 2004 Hazardous Vegetation Program.*

Action: *On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the City Council unanimously (5-0) **Adopted** Resolution No. 5834, ordering that the Final Report on the 2004 Hazardous Vegetation Program be transmitted to the County Assessor's Office and that liens be posted against the properties on the report.*

15. ZONING AMENDMENT APPLICATION, ZA-04-02: COCHRANE-ASSISTED LIVING CENTER – Ordinance No. 1689, New Series

Planning Manager Rowe presented the staff report, indicating that the request is to amend the zoning of the St. Paul Health Center site to allow for two proposed facilities: 1) a 40-70 unit congregate care facility and a 94-unit assisted living facility; and 2) a child care center to be located at the corner of Mission View and Cochrane Road on the St. Louise portion of the site. He clarified that with the approval action, the Council would be approving two alternative scenarios relating to the childcare facility.

Mayor Pro Tempore Sellers inquired as to the desire to have a childcare facility at this location.

Planning Manager Rowe indicated that the congregate care facility would be utilized by retired, older residents who require a minimal amount of assistance. He said that it is felt that the ability to have this age group interact with young children would be beneficial for both groups. Also, it is proposed to have a childcare facility on site that would provide on site child care services for employees and would help to promote the site and to attract physicians. He indicated that the childcare facility would be used by the greater community.

Mayor Pro Tempore Sellers stated that based on staff's comments, a childcare facility should be encouraged. He said that the inclusion of a childcare facility signifies that the applicant has long term plans and will significantly expand the employee base.

Mayor Kennedy opened the public hearing.

Rick de la Cruz, speaking on behalf of the applicant, indicated his support of staff's recommendation. He stated that he was pleased to hear about the Daughters of Charity. He said that the hospital efforts would be expanded to include activities additional to what the Daughters of Charity have processed with the City in the past. He said that the Morgan Hill Assisted Living Partners are primarily made up of his firm, Eric Jacobson, and the Barry Swensen Group. He displayed a site plan and addressed the critical concepts that they are bringing to the site. He stated that the childcare is important to them and the community and addressed the reason he is requesting the two site options. He indicated that the first building to be built would be the assisted living facility, noting that the design would be reviewed by the City's Architectural Review Board next month. He informed the Council that he came to the City as a single project on a single parcel. Through the cooperative work with Joann Allen and her team, he was able to come up with a site plan where circulation, parking, and the ambience of landscaping, etc. are shared. This allows the property to work as one, minimizing any impacts to Mission View. He said that he can work on whichever plan the Council selects. He clarified that the childcare center would be developed on the Daughters of Charity property. He stated that both properties are a 24-hour, 7-day operation, and that he is developing a workforce of employees with families who will be working late at night. The daycare facility would provide support for children who have short illnesses, or families who need childcare over the evening. He indicated that his workforce is sensitive, and that they want to do everything possible to bring employees to Morgan Hill and keep them on staff. He said that the Daughters of Charity and the congregate care have the same point of view. Therefore, a good partnership has developed. He said that he, as an entity, has done a lot of research on dementia and Alzheimer. He stated that the Daughters of Charity have asked that he consider the possibility of building a skilled nursing facility. He indicated that skilled nursing facilities are complicated and difficult to build. However, should there be a strong market for a skilled nursing facility; he would have to work out all the issues with staff so that there would not be a delay in picking the correct mix of medical activities. He informed the Council that should everything go well, he plans to break ground in late fall or early winter, but no later than the first part of 2005.

No further comments being offered, the public hearing was closed.

Action: *On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the City Council unanimously (5-0) **Approved** the Mitigated Negative Declaration.*

Action: *On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the City Council unanimously (5-0) **Waived** the Reading in full of Ordinance No. 1689, New Series.*

Action: *On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the City Council **Introduced** Ordinance No. 1689, New Series, by title only, as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO THE PRECISE DEVELOPMENT PLAN FOR THE DE PAUL (FORMERLY SAINT LOUISE) HEALTH CENTER INCORPORATING UP TO A 70-UNIT CONGREGATE CARE FACILITY, 94 UNIT ASSISTED LIVING FACILITY, A 6,050 SQ. FT. CHILD CARE FACILITY AND A 13,560 SQ. FT. COMMERCIAL OFFICE BUILDING. (APNs 728-031-005, 006, 012 & 013)** by the following roll call vote: **AYES:** Carr, Chang, Kennedy, Sellers, Tate; **NOES:** None; **ABSTAIN:** None; **ABSENT:** None.*

16. PROTEST, PRO-04-03: ANNEXATION, ANX-03-01: HILL-GERA – Resolution No. 5833

Planning Manager Rowe presented the staff report, indicating that this item is a procedural matter for a City conducted annexation. He informed the Council that the applicant, Mr. Gera, does not have consent from all owners to annex the property. Therefore, established procedures require that the Council conduct a hearing for the purpose of setting a date for a public hearing to consider the protest. He recommended that the Council conduct the hearing and adopt the resolution of intent to hold a public hearing on the protest setting the date for the public hearing as August 18, 2004.

Mayor Kennedy opened the public hearing. No comments being offered, the public hearing was closed.

Action: *On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the City Council unanimously (5-0) **Adopted** Resolution No. 5833, Intent to Hold a Public Hearing on the “Protest Proceeding” at the Regular City Council Meeting of August 18, 2004.*

18. GENERAL PLAN AMENDMENT, GPA-04-06: CITY OF MORGAN HILL TEXT AMENDMENT FOR MEASURE C – Resolution No. 5835

Planning Manager Rowe presented the staff report, indicating that on March 4, 2004, the citizens of Morgan Hill approved Measure C. He stated that Measure C amended and extended the term of the City’s residential development control system through the year 2020. He said that in April 2004, the Council approved an ordinance which incorporated the initiative provisions. The ordinance included language which required that the City, within 120 days of the effective date of Measure C, review the general plan to ensure that all provisions within the general plan are internally consistent with the provisions of Measure C. He recommended the adoption of the resolution relating to the general plan text amendment for Measure C.

Mayor Kennedy opened the public hearing. No comments being offered, the public hearing was closed.

Action: *On a motion by Council Member Tate and seconded by Council Member Carr, the City Council unanimously (5-0) **Adopted** Resolution No. 5835*

City Council Action

21. REPORT OF THE COUNCIL SUBCOMMITTEE ON THE LIBRARY PROJECT SELECTION (Continued from 6/23/04).

City Manager Tewes presented the staff report, indicating that earlier in the calendar year the Council established a goal that by the end of June 2004, the Council would adopt a feasible strategy for the construction of a library. The Council appointed a subcommittee comprising of Mayor Kennedy and Council Member Tate who met for several months, analyzing a number of options, narrowing them down, receiving public input and working with the Library Commission to analyze the proposals. On June 23, the library subcommittee made four recommendations to the Council: 1) that the Council select the downtown proposal (former Sunsweet site) for the new library and that the library project be a part of a comprehensive development of the site that would include retail uses, housing and parking. 2) A financing strategy. 3) The City Manager to evaluate an alternative project management model different from the traditional approach to perhaps find ways to save money during the construction process. He indicated that the Council authorized staff to begin this analysis on June 23, stating that staff was not prepared to present a report on this item this evening. 4) The City Manager and staff recommended initiating a long series of steps outlined in the staff report, and an implementation plan. The implementation plan suggests that the City begin negotiations with property owners.

City Manager Tewes clarified that the Council is not being asked to accept the proposal from the property owner but that it is being asked by the library subcommittee to adopt the site and to direct the subcommittee/staff to work out a number of issues. He stated that in the implementation plan, the Council directed that staff begin with two items: 1) analyze an alternative project model which staff is not ready to do this evening; and 2) perform the analysis that would lead to a potential increase in the development fee. He indicated that staff has concluded their analysis and that it is before the Council this evening. He said that it is being recommended that the City take the steps necessary to increase the development impact fees no matter which site is chosen for the library. He noted that Mayor Kennedy has made a recommendation to the Council that the decision on which of the two sites, as recommended by the subcommittee, be deferred until such time that there is an advisory vote of the people to be placed on the November 2, 2004 ballot. If it is the Council's desire to proceed, staff would alert the Council to the critical timelines with respect to a ballot measure. Should the Council decide this evening to proceed with an advisory measure, he said that staff must immediately proceed to prepare the actual language for such a measure and to bring back the authorizing documents at the next Council meeting of July 28, 2004 in order to meet election deadlines. After hearing from the community and discussing all matters, he requested that the Council provide staff direction on how to proceed with the library project.

Council Member Tate stated that the library subcommittee presented its report on the site selection for the library at the Council's June 23 meeting. He said that he has since reconsidered his recommendation

and that while he stands behind the report as accurately reflecting his opinion of where the library should go, he now recommends, pending any new information from the public input to be received this evening, that the Civic Center site best meets the wants and needs of the community for a desperately needed new library. It is his strong desire and request to the Council that it takes decisive action on this matter this evening and not delay it further. He stated that he would like the opportunity to elaborate on his reasons for this change when there is Council discussion.

Mayor Kennedy indicated that he has received tons of e-mails, voice mails, and personal contacts. He stated that he appreciates the input that has been provided as it has been very helpful and educational. He said that this has been a difficult struggle for the Council. He noted that the library commission has taken a position on it. The City hired a consultant a while back and the Council chose not to follow the consultant's recommendation for a site at a different location. He indicated that the library commission has supported the civic center site, and that one library commissioner has resigned over this issue. He felt there is one common thread that he has seen: individuals are generally in support of the library location going to the voter to allow them to make the decision. This is the reason for his recommendation to the Council. He said that both sites are good sites. The pros for the civic center are: 1) good opportunity for public art; 2) sister city plaza adjacent to the park/pond nearby; 3) space to grow; 4) it is city-owned land; 5) it is a tranquil site and has good pedestrian access. The pros for the downtown site are: 1) it is closer to the center and heart of the community and downtown; 2) close to businesses; 3) there are further opportunities for public art; 4) there would be good synergy with the Courthouse, transit center and various businesses in the downtown; and 5) good pedestrian access and central transportation access as well. He said that the most important thing about the library is that the Council wants it to be something that will benefit the entire community. He stated that it is disappointing to see that it has divided the community in many respects. It was his hope that the community can come back and work together to build a wonderful library. He said that either site would be an outstanding library facility for the community. He noted that he has made a recommendation that the Council place the site selection issue on the November 2004 ballot. It was his belief that the public is not a special interest group, and are the citizens who the Council is elected to represent. He felt that an issue like this is important to the community and that it was important for the community to have a say in the decision.

Mayor Pro Tempore Sellers wanted to assure the public that he has spent a lot of time over the past few weeks reviewing the many e-mails/information and other materials that he has received. He assured the public that he is up to speed on this matter along with the rest of the Council.

Council Member Carr referred to the operational funding. He noted that the library parcel tax to extend funding that helps operate the library did not pass. Yet, the County will be giving the parcel tax a try again. He inquired whether at the end of this calendar year this tax will end.

Council Member Tate indicated that the library parcel tax will run out in June 2005. He said that the strategic thinking is that the County library did not do well passing a library parcel tax in March 2004. The County believes that it can become a ballot measure again in March 2005. However, it was felt that the extra three months would be needed. Therefore, June would be the last opportunity to keep a continuous parcel tax and still have it pass. He stated that there is still an opportunity to not have a funding gap in the operations if the ballot measure passes in June 2005. He stated that State cuts have

affected the operations of the library. He indicated that there are individuals who are retiring from the library system. Therefore, there are cut backs planned to take place, some as early as November 2004. It is not clear whether these cuts would affect the Morgan Hill library.

Mayor Kennedy opened the floor to public comment.

Barnum Lambert, a resident of Morgan Hill, Hamilton Square, complimented the community for the development of this subdivision. He stated that he got involved with the library site selection because some of his neighbors asked him his thoughts about moving the library. He stated that he sent an e-mail to the Council and Mayor Kennedy, receiving a couple of responses from Mayor Kennedy and Council Member Tate; both providing him information. He downloaded the library subcommittee report. He stated that he is a consulting engineer and that it was his opinion that a report such as the one prepared would not receive a contract as it lacked a determination of the differences between the two locations. The report made no responses to the third location mentioned. He felt that the actions recommended in the report are questionable and may be inconsistent with public policy. He stated that he visited both sites and that he does not see selecting/moving the library off the civic center site as the City owns the civic center property, it has a building that can be renovated and that a beautiful setting exists for the library already. He felt that the reasons given for moving to the downtown are speculative and highly suspect.

Marguerite Sinnett expressed concern that the City wants to decide the location for the new library without putting it out to a vote by the taxpayers on November 2, 2004. She indicated that many residents feel that while the downtown might need help, compromising the new library is too expensive a gamble with no guarantees that it will work. She indicated that residents are being told that a downtown two story library building would cost almost \$18.2 million with no expansion possibilities. She noted that the Council has not mentioned the elephant that no one wants to talk about; the cost of the land downtown that the taxpayers would need to purchase in 20-25 years at the prevailing market rate. She felt that the City would be purchasing 1.5 acres of land at a value that the landowner places at \$32 per square foot today, equating to \$2.1 million. In 20 years, at 15% annual appreciation, the taxpayers will be facing a huge debt of approximately \$34 million for land to accommodate an outdated library. If appreciation averages 20% per year, the cost of the land could be \$80 million and felt that this was fiscally irresponsible. She noted that the cost for the civic center site is approximately \$14.5 million and there would be land to add another 10,000 square feet of library space in the future. She felt that the only place to build a new library was at the civic center where citizens would have no future debt or surprises attached. She indicated that a survey shows that citizens prefer the civic center site 2-1. The Library Commission voted on June 7 in favor of the civic center site 6-0 with one abstention. She stated that the City Council has indicated that it may have to choose a site that does not meet citizen approval, while one Council member believes that only the special interests will be voting if placed on the November ballot in November. She informed the Council that this is a hotly contested presidential year and that most of the registered voters will be out voting, and not just the special interest individuals. She indicated that another Council member is not sure whether letting the voters decide is the best way to go and that he could not find anything appropriate to place the issue on the November ballot. She assured the Council that voters are smart and believe that the November 2004 ballot is the only way to go and that Council delay would be transparent. She said that the voters and tax payers are intelligent and

informed and can make the right decision. She did not believe that the library site should be decided by five members of the community, even if they are the City Council. She felt that the library issue must be placed on the November 2, 2004 ballot with the projection for the entire cost of a downtown library, including the land cost in 20 years. She requested that the Council allow the voters to decide whether they want to pay \$14.5 million for a library at the civic center or a library that is estimated to cost \$52.2 million in the downtown because of the added land cost in 20-years.

George Nale stated that it was his belief that the library belongs at the civic center; that the citizens want it to remain at the civic center; that the citizens of Morgan Hill have so stated this fact many times in many ways; and access, safety, cost and setting favors the civic center location. He said that the question this evening is what constituents would be represented this evening?

Blair Northwoo, a 10-year Morgan Hill resident, indicated that the first thing she did when she moved here was to visit the library and get a library card, using it ever since. She stated that she likes the library where it is, as it is in a quiet area, has a pretty location that is calm and reflective and has almost no traffic because it is in a residential area. She only recently heard about the planning of a new/larger library and moving. She remembers that a few years ago there was consideration of the location of the library as well. As she had not heard anymore, she felt that it was all settled and that the library would remain at the civic center site. She was surprised to hear that the Council was considering a downtown location. She has not heard any reasons stated against the current site as it can accommodate an expansion. She noted that the Library Commission recommended that the library remain at the civic center. She stated that she likes the downtown as she shops there. She indicated that when she goes shopping she would not visit the library in the downtown location and visa versa. She did not believe that the downtown was an appropriate location for the library. She expressed concern with the lack of parking, traffic and the inability to expand at the downtown site. She felt that it made a lot of sense to put the site location of the library to the vote of the people. This would give the Council an advisory on where voters expect to see their library and how the City's money is to be spent.

Karrt Haimowitz stated that he was pleased with what he is hearing this evening. He felt that the Council knows who were in attendance this evening, citizens in support of the civic center site. He expressed concern that there were individuals in the community who do not know who these individuals are. He indicated that there were three letters in the Morgan Hill Time this week from individuals in support of the downtown site. He felt that these letters contained misinformation about who the civic center supporters are, and contained misstatements. The letters stated that the civic center site supporters were a small vocal minority, individuals who reside in the neighborhood of the library and who want to keep the library in the neighborhood. He indicated that petitions have been circulated that contain over 1,000 signatures. Twenty percent of those who signed the petition reside in the neighborhood of the library while nearly 80% reside all over the Morgan Hill community. He indicated that he resides in south San Jose and felt that the Morgan Hill library is a better library than the Santa Teresa Library branch and so he uses the Morgan Hill library. He noted that the Council's polling showed that two-thirds of the citizens were in favor of the civic center site. He felt that the Council, in considering the downtown library site, has something in the way that prevents it from seeing what is in the best interest of the citizens of Morgan Hill. He indicated that those in attendance this evening were the Council's constituents who use the civic center site.

Ed Nauss, a two-year Morgan Hill resident, stated that he has many close acquaintances and has worked closely with the Gilroy county library branch. Since coming to Morgan Hill, he has had the opportunity to contribute 300-400 books for sale to the Friends of the Library. When Measure B failed to pass, he made a check out for \$35 to the Friends of the Library and that this amount would continue year after year if a measure such as Measure B does not pass. When he is asked about his preference for the library site, a question that is not considered is whether the site is convenient. He is not concerned with personal convenience in getting to the library but is concerned about the welfare of the library and its ability to serve the citizens of the community. He indicated that the wildly popular answer was that the civic center site was the preferred site. He felt that to narrow the confines of the downtown location would be to cripple the library and its services and to eventually stunt its growth. He said that there is a strong current in favor of the Civic Center site. He stated that it would be remiss and irresponsible to pretend to a higher wisdom which appears to be not facing up to this and dismissing it in a cavalier fashion.

Cindy Webenbauer stated that she attended this evening's meeting because she was afraid that the Council would be leaning toward placing the library in the downtown. She was pleased to hear that Council Member Tate has had a change of heart because she felt that it would be a wrong move to place the library in the downtown. She indicated that she does not reside adjacent to the library. Her interest is that of a library user, a mother, a registered nurse and a taxpayer. She loves the civic center location as it is a beautiful location. She felt that the downtown location would only serve one purpose, serving the downtown. A downtown library would not serve the library or library users. She felt that it was wrong to locate the library in the downtown. Should the Council be opposed to the civic center, there may be an alternate site that would be acceptable to all. She stated her support of the civic center site.

Nancie Barker thanked Council Member Tate for his comments and his willingness to build a library at the civic center site. She indicated that many citizens are working individuals who are busy. She said that there has been a comment made that many individuals had nothing better to do than to go out and secure signatures on a petition, and she assured the Council that this was not the case. She noted that she had a petition that contained over 1,000 signatures and that there are still other petitions being circulated in the community. She stated that she obtained 250 of the signatures with very few of the signatures coming from her area. She indicated that most of the signatures she gathered came from the Farmers Market, the Friday night music or the Fourth of July celebration. The individuals she spoke with were from all over the community. She stated that more than 90% of the individuals with whom she spoke adamantly wanted to keep the library at its current location. She has been told the City has already spent \$250,000 on architecture fees for the civic center site and she would hate to see this fee wasted. She did not believe that there was any synergy between the library and the downtown. She asked citizens whether they would combine shopping and going to the library and the responses were that they would not. She felt that the city needs to move forward and build a library as it is desperately needed in the community. She expressed concern with ground contamination associated with the downtown site and requested that this concern be addressed. She stated that she would like to work with the Council toward a good library for this community. She would agree to work toward the passage of an equivalent of Measure B. She stated that she would like to see the City move forward with building a library at the civic center area where the citizens would like to have it.

Bob Martin stated that he was in attendance at the request of the City's Economic Development Committee (EDC) and representing their interest. He stated that he was reinforcing their unanimous support for a downtown library. The support is given because a downtown library would stimulate economic development and would subsequently generate much needed sales tax dollars which would benefit all Morgan Hill citizens. He said that downtown libraries are fulfilling these economic development objectives throughout the country. He stated that many states are supporting and providing aid to communities building libraries in downtown areas, particularly in historic sites and in areas that eliminate blight. He said that it has been stated that to place the library in the downtown would be to ignore the wishes of the taxpayers and the citizens of Morgan Hill. He reminded the Council that the Morgan Hill Downtown Association, Chamber of Commerce and the EDS are in support of the downtown location, noting that each of these bodies represents thousands of taxpaying Morgan Hill citizens.

Charles Cameron indicated that he e-mailed the Council addressing the fact that staffing costs would be higher with the downtown library site. He requested that the financial information for the downtown site be addressed. He said that parking associated with a downtown library appears to be at 95-100 parking spaces. He did not see that there will be an increase in parking spaces should the library expand unless the City purchases property across Depot. Doing so would result in citizens crossing Depot to access the downtown library. He did not see that this was a positive aspect associated with a downtown library. He supported Mayor Kennedy's suggestion of placing the library site selection on the ballot, but that it would delay the decision of the library even further. This would result in costs going up between now and November. It was his belief that an additional \$400,000 in RDA funds has been allocated to other projects and that a few months of delay would result in additional funds disappearing. He felt that the Council has the information to make a decision. He requested that the Council make its decision this evening. If the Council really believes that downtown is the right place for the library and the vote goes for the civic center, the Council will be in a political box to try to make a decision that is contrary to what the voters are asking for. He felt that a far better solution for the downtown site would be a Trader Joes as there would be a lot more synergy associated with this business than there is with a library. He noted that Chuck Dillmann is suggesting that the Council consider other Monterey Road sites for much better visibility while others are suggesting that the Edmundson site would have more synergy than the downtown. However, he leaves these thoughts with the Council.

Stu Nuttall stated that he initially followed Council Member Tate's logic for a downtown library. When he talked about this possibility with his neighbors, he got shut down. This made him think about the issues. He indicated that he visited the downtown site and thought about a downtown library site. In his assessments, he felt that the downtown site is too busy to have children running around in it and that the price for the land is too high. He felt that the ambiance of the civic center is amazing and superior. He stated that the 60,000 Coyote Valley residents will be only a few miles away. He did not believe that the City of San Jose's planning would be conducted well with regard to libraries. He felt that gaining that much downtown access from a community that will be right up the way will be overwhelming and unsafe for the children.

Jon Hatakeyama stated his support of Council Member Tate's suggestion as it takes a lot of courage. He thanked Council Members Carr and Tate for the publicity given to the library's current campaign to sign

up more children for library cards. He stated that his volunteer profile with the community has been consistent with helping children and public education; indicating that he founded the South Valley Morgan Hill Fishing Scholarship trip, funding scholarships for the past 12 years. The South Valley Wine Action sponsored by the South Valley Athletic Foundation supports the running programs of all middle schools and high schools, including Sobrato and has supplied four scholarships for the past five years. He stated that he considers the library to be an extension of public education. He indicated that libraries in schools sit empty becoming storage rooms, meeting rooms, lunch rooms and are no longer functioning as libraries. However, teachers still assign outside reading assignments. He said that parents cannot afford to buy books. He felt that the School District assumes that the community will have a functioning full service library to provide the books for students. He felt that the community and City needs to consider the needs of the library because public education is dependent upon it. When you look at the librarians who will provide this service, they are highly regarded. He said that there is a need, there is an organization, and the City needs to provide the proper facilities for the librarians. The City is planning to build a 40,000 square foot library projected for 50,000 individuals. He noted that the City is at a population of approximately 35,000, noting that the population has doubled from 10 years ago. In 15 years, Measure P will twilight. He said that there is a possibility of approximately 35,000 jobs and San Martin is in the process of incorporating as City, resulting in an increased population. He felt that a 40,000 square foot library will too small. At the civic center, the library can be enlarged where it could not be enlarged in the downtown location.

Leslie Miles indicated that she is president of the Downtown Association. She stated that in early February, her organization was asked to weigh in on a ballot measure in March with the focus being whether there should be a library in the downtown and how to participate. The Downtown Association voted as group to make an endorsement of supporting a community library. In April, the Downtown Association received plans drawn by a local developer, Rocke Garcia and were asked to review them. The Association has been given the direction to make sure that the Morgan Hill Downtown Task Force documentation and the directive is followed. The Task Force document was put together over a two year period by a large diverse group of community members that resulted in a number of particular focuses. One of the focuses was that Third Street would be a promenade that would involve retail and would be a vital center of the community. With the first set of plans, there was concern that the library would take up all of the retail area on 3rd street. It was the Association's direction to respond to the drawings. The Association gave the response that it wanted to maintain the development along 3rd Street in order to ensure retail. The focus of her organization is that when someone comes to them with a concern, question or endorsement, the Association evaluates the information received. She indicated that the Association evaluated the initial plans and that it felt that it did not meet the Task Force document. In turn, the Association requested that changes be made. The changes were made and, therefore, the Association felt that they could support the project in its concept. She stated that the Association supports the downtown location, in concept, as it meets the Task Force document. Personally, she felt that this is a matter of land use and not typically a voting procedure. The discussion usually involves consultants and individuals who have experience in looking at land use who can present an educated opinion. It was her understanding that the initial educated opinion was for the library to be built next to the indoor recreation center. She raised her hand and stated that she was not sure that this was the right location for the library. She felt that the City needs to take some time as a community and determine

whether the civic center site will be able to locate an expansion. She inquired whether the necessary analysis been done for the civic center site.

Chuck Dillmann felt that the library is too small at 28,000 square feet as it can barely support today's population. He noted that a 40,000 square foot library would be consistent with Measure C and would be fully utilized in 20 years. He felt that the Council's decision should be made in conjunction with the decision for the overall civic center needs and be integrated with that. He stated that more time is needed to make an informed decision and to consider alternatives. It should also consider fixing a blighted area which might generate additional funding. The new item of having an advisory election would be the worst of both worlds as it would delay things for 3-4 months. He felt that the 3-4 months could be spent by the reconstituted task force deciding what the optimum civic center plan is for the future. He noted that the election would cost money. He felt that the measure dealing with more funds for building libraries was moved from this ballot as it was full and that it was believed that no one would consider half of the measures on it. Therefore, it would not be a good time to have a key decision on the ballot. He did not believe that this was a decision that could be made by voters as it requires a detailed analysis of the issues.

Rocke Garcia indicated that he has been a resident of Morgan Hill for over 25 years. He thanked the City for inviting him into the process in January 2004 when he was asked by the Mayor to consider a library in the downtown. He clarified a few issues that were raised this evening so that the public can understand how his involvement came about. He reiterated that he was asked by the City to pursue a library in the downtown, spending thousands of dollars of his money in this pursuit, working through a library option for the Sunsweet site. He felt that the downtown site is the correct location for a library and that the downtown needs to continue its revitalization. Initially, he was told that the City has no money to be able to build a library and that he was asked how he could help the City. As a builder and developer in this town, he tries to address problems and tries to solve them. He agreed to place a long term lease on the land so that the City does not need to place cash dollars upfront. He said that the basic equality between the two land values is equal. A question asked at the time was what he could do to guarantee a 30,000 square foot library building. He presented a letter to the City guaranteeing that the public cost would be no more than \$300 per square foot (\$9 million) including construction management fees. He hired a well known architect, Phil Peoli based out of San Francisco, experienced in building over 20 libraries. He stated that the individuals he has brought on board, from engineers through architects, are number one in their professions. He felt that the design team needed to be well qualified if he were asked to take on this project. He understands the dilemma the City has with regards to the location of the library. It was his hope that the Council is able to listen to everyone. He stated that he understands that, had he lived close by or nearby the civic center location, he would want the library built here. It was his belief that there are other well informed individuals in the community who would like the library built at the downtown location. He stands ready to do what the City would like him to do.

Marby Lee addressed the "us versus them" attitude that has been raised by individuals in the paper and otherwise. She noted that it was stated that members of the community who are for the civic center library site are confrontational and angry. She confirmed that this group is angry because at the Council meeting held three weeks ago several individuals stood up at the podium and talked about how they would like a civic center library. It was felt that these individuals were being disregarded and that this

inspires passion in individuals. Following the Council meeting, a group of 10-12 citizens got together and decided to do something. She stated that citizens are passionate about the library staying at the civic center site. She stated that the group has worked hard over the past three weeks, indicating that the group has gathered over 1,000 signatures in favor of the civic center library site. At a previous Council meeting, an individual from the Morgan Hill Downtown Association talked about how difficult it was for businesses to gather signatures for a petition. She felt that having a business would be the best way to get signatures on a petition. She indicated that citizens with jobs and children got out to gather signatures, taking personal time away from work and family to tell people what was going on and explain why it was felt that the civic center was the best site for the library. It was her hope that the Council would vote in favor of the civic center library site.

Jeanne Gregg, Library Commissioner, indicated that 4.5 years ago, when she was appointed to the Library Commission, the Commission was trying to decide on the site for the library, and noted that this is what the city is still doing. She felt that the Council needs to make a decision and move on. She expressed concern in all of the discussion about the ambiance of this site or the noise of the downtown site, noting that the Council has not discussed the size of the library. She indicated that the reason that the Library Commission came up with the 28,000-30,000 square feet was due to the fact that this was all the City could afford. However, this square footage would not be adequate in the future. As a taxpayer, what she resents the most is when a bad decision is made that she ends up paying for it, such as the sewage plant that was built on clay and did not drain. When a decision is made for the library, the City needs to plan for a library that is much larger with additional parking available. She concurred with the comments as expressed by Mr. Dillmann. She requested that the passionate library supporters help work for the passage for the new Measure B so that the County can keep the new library open.

Wanda Brown indicated that she lives in the civic center neighborhood and owns property in the downtown, noting that it floods in the downtown area. She felt that the proposed downtown site may not be a good site. She did not believe that building anything by the railroad tracks is productive.

Renee Roberts stated that she was not in attendance to support a specific site but in support of the City Council. She thanked the Council members for their responses to her e-mails as they have been helpful to her and to the individuals she has been talking to. She stated that the main concern was that it was either the civic center site versus the Sunsweet site. She felt that the environment got hostile when there may have been misinformation gathered or no information provided. Should the Council vote tonight for a downtown library location, it may not be the Sunsweet site. She said that it sounds as though there is still a lot of negotiations that need to take place. She understands that this is a complicated issue with many factors. She felt that it would be great if the issues could be addressed with the downtown site. She stated that this is a complicated issue and that with all the research conducted by the City, she did not believe that the site location should be placed on the ballot as an advisory vote. It was her belief that the Council was receiving the input that it needs at this time and the placing the matter on the ballot will only delay the construction of the library. She recommended that the Council try to make a decision this evening and then move forward.

No further comments being offered, the public comment was closed.

Council Member Chang indicated that she has been given a lot of thought to this issue. She apologized to Mr. Garcia, stating that a while back she supported a downtown site for economic development purposes. She understood that Mr. Garcia had spent money on the library project. She stated that she has been talking to a lot of individuals about this issue. Should the City build a library, she felt that the City needs to own the land. She felt that the civic center site would allow construction of a library at an earlier date. Therefore, she would support Council Member Tate's recommendation. However, she felt that the City should reimburse Mr. Garcia for his expenses associated with a downtown library.

Council Member Tate clarified that he did not change "sides." He stated that he is on the side of Morgan Hill and that he will always be on the side of Morgan Hill. He acknowledged that the City is in need of a new library. On June 23, there was a groundswell reaction to what was stated by the Council that made a vast majority of the community get behind the civic center site, including circulation of a petition. He indicated that he received e-mails at a rate that he has never gotten from citizens before, too many that he could not respond to or answer them all individually. He knows that the civic center site works well and has the advantage of having more space. This advantage could work on some of the issues that were raised. He stated that he did not believe that the downtown is harmed in anyway should the library be built at the civic center. However, it was his belief that the city would miss an opportunity for the downtown, and he stands behind the report prepared in support of the downtown. He felt that the downtown would be a benefit to the library because it is located in a mainstream location and will have access by more users. It was his belief that a library in the downtown would increase the heart, soul, vitality, the community-feel and sense of community if built in the downtown and if supported by the citizens. He noted that the downtown site needs redevelopment. He stated that these were the reasons he supported the library being constructed in the downtown. He stated that he still prefers the downtown site, but that he could not keep supporting it as a recommendation. He said that not having a downtown library site does not economically harm the downtown. Having a library in the downtown would make it more vivacious, lively, etc. He agreed that you do not shop and then go to the library. Therefore, he did not believe that not building a library in the downtown would hurt the downtown economically. He indicated that there were other ways to invigorate the downtown and that it was his hope that everyone would help the Downtown Association, the Chamber of Commerce, etc., to try to implement ways to stimulate economic development and invigorate the downtown with the uses we would like to see in the downtown. When he made his arguments for the downtown, he did not believe that he articulated them in a way that convinced individuals of a downtown benefit.

Council Member Tate stated that he now understands the depth of the feeling regarding the library site; the total ownership and involvement of the community. He agreed that the involvement is across the entire community. He justified how the Council got here and explain it somewhat. He indicated that in January 2004, the Council opened up the site selection. He said that the last time the Council went through a site selection process; the Council did not have any locations in the downtown. Some possibilities emerged for a downtown library site. The council's reason for opening up the site selection was for the purpose of considering downtown sites. He said that there were 3-4 downtown sites to consider initially. The Council weeded out a couple: the Albertson shopping center site and the Britton Middle School site. The Council talked to the School District about the Britton Middle School site but they believe they have to save it for their future use. The Council also looked at expanding the existing library as opposed to building a new library. He indicated that the Council found out that it would be

more expensive to expand versus build a new library at the civic center. Therefore, the Council narrowed down the library site selection to the downtown site and the civic center site.

Council Member Tate indicated that at every Library Commission meeting held there were extensive conversation on these sites, noting that there was no one in attendance to participate in discussions. He said that the Council commenced a study process, indicating that it was publicized in the media. The Council authorized library commission studies and that no one seemed to care at that point. Individuals started to care on June 23 and began to mobilize, leading to today's meeting. He acknowledged that the Council conducted an informal poll and that 2/3 of the respondents stated that they preferred the civic center site. He said that this may seem as though it is an overwhelming number, but he found this to be encouraging for a downtown site. The results led him to believe that 1/3 of the citizens would be willing to look at change. He reiterated that he did not receive any input on the library site election until after June 23. He said that the Council has made the decision on its own where the indoor recreation center is to be sited, where the community center was built, and where the aquatics center was built. He noted that there was no public furor or uproar about the location of these facilities. It was his belief that this was something that was felt to be a Council decision. This factored in to his feeling that the library location is still a Council decision; one that he believes is best for Morgan Hill. He said that it was not until the ground swell and momentous eruption on June 23 that he started turning around. He stated that he was wrong as this is an issue that is near and dear to the citizens' heart. He said that should the Council ever conduct another library location study again, he would not pass it without receiving the full and complete input of the public. He would place a much higher priority and would conduct the scientific studies early on in the process.

Council Member Tate said that a lot of the e-mail was about one side versus the other side. Citizens were attacking the downtown and statements made about who would ever consider the downtown as being a feasible site. He felt that one needs to consider that there is another side to things. He said that there are factors found that lead individuals toward different conclusions. It was his belief that working toward consensus and community support for the project is important. He felt that you have to work with individuals with different opinions and give credence to them. He recommended that everyone work together and build the new library that everyone wants and not stay divided on the issue. It was his belief that it was time to move forward.

Council Member Tate indicated that the Council received input from citizens prior to the June 23 Council meeting and that the Council considered this input, especially from the Library Commission. He addressed the following issues:

- From the beginning the Council said that a two-story library is less efficient but that the County library staff has stated that they would be able to operate a two-story facility. He said that there is a notion that a downtown two-story building would be at a much higher cost.
- He stated that it has been the Council's assumption from the beginning is that it is an equal cost or within \$½ million. He indicated that Mr. Garcia explained the land cost, noting that he offered the land deal such that the City would pay rent on the land for 25 years and then purchase the land as a way to defer payment. This offer was a way to help the City on its costs. He

indicated that the Council found extra money and that should the Council choose to go with a downtown site, the City could negotiate to purchase the land. He stated that he reached the conclusion that should the Council decide on a downtown site, the City would need to buy the land up front.

- He noted that everyone believes that limited parking is still an issue, indicating that the Council found extra funds to address the parking issue. The funds would not only address the library parking issues but would provide additional parking for the downtown area as a whole.
- He said that there has been a lot of talk about safety and traffic in the general downtown area. He stated that there is a safety issue in the downtown with traffic at this time and that this problem has to be resolved now. It was his belief that the traffic problem would have been solved with the construction of a library in the downtown.
- He did not understand the comment that the downtown area was unsafe as it is adjacent to the railroad tracks. He noted that the City has a community center in the downtown. There are several merchants who are opened at night. Therefore, he did not believe that a safety problem exists. He did not understand how having a use adjacent to the railroad tracks would make the use unsafe.
- He felt that there were contradictory statements that the traffic is so congested that no one would ever go to the library. If no one would ever go to the library, how could there be congestion?
- Council Member indicated that the Council received a report that would start looking at the issues/address the issues such as traffic congestion and how the parking is to work, receiving a report at the end of October. He acknowledged that the Council has not solved all of the problems.
- Regarding the statement that this would be a much better site for Trader Joe's, he stated that the City has a partnership with the Chamber of Commerce. He indicated that the Chamber of Commerce has written over 5,000 postcards to Trader Joe's inviting them to locate in Morgan Hill. Trader Joe's has not made a final decision but indicate that they cannot count on the existing population.
- Distrust of the developer has been an issue. He said that this may be an issue but that the Council knows how to write contracts and agreements. These documents would be available to everyone and that everyone can review them.
- Regarding the statement that the property is ugly and an armpit tells him that the property needs to be developed.
- Noise mitigation measures would be implemented to address noise from the train.

- Expandability of the library is a requirement. Therefore, there was a place reserved in the preliminary design for the downtown site for expansion. He stated that he did not understand the complaints that a downtown library would not be expandable. If it were expandable, it was felt that there would not be enough parking. He stated that the City would construct additional parking in the downtown.

Council Member Tate felt that he had answers to all issues raised previously. However, he understands that the community does not want a library in the downtown site. He was disappointed with the comments made that citizens believe that there was some political agenda, shady deals, and/or monetary gain. He did not understand why it was believed that by threatening individuals you would get individuals to agree with your thinking. He did not believe that you can build consensus with threats. He said that polarized statements without recognizing that someone could have a different viewpoint were upsetting. He agreed that a new library is needed and that it will work well at the civic center site, noting that individuals overwhelmingly want it at the civic center site. He did not believe that the downtown would lose if the library is placed at the civic center site. He noted that the civic center site is in line with the City's proposition 14 application. However, the City is not hopeful that it will receive state funding. He said that there is a possibility of a bill authorized by Senator Dee Dee Alpert that stipulates that applicants who do not pass the round three funding for proposition 14 would be first in line for a new bond that may be placed on the March 2006 ballot. Therefore, keeping the application with the civic center site would help with the bill.

Council Member Tate stated that he supports the report that he and Mayor Kennedy wrote. However, he could not support not building a new library at the civic center site. He felt that it would further the division in the community. He felt that the library site selection has to be placed behind and move on. He stated that he strongly does not support placing an advisory measure on the ballot. He noted that there are three seats up for election in November 2004 and that there is no guarantee that any of the incumbents would not be replaced. Right now, the community has a council where five members are in support of a new library. He did not want to risk losing a council majority in favor of a new library. He indicated that the Council promised a decision to the public by the middle of the year, noting that it is now the middle of the year and a time to make a decision. If the Council was to take a vote, it will be well over two-third's that would vote in favor of the civic center site. He felt that there was educational information that can be provided in terms of showing the community how downtown libraries have affected other communities and it might change 2% or 3% of the vote. However, the Council would have to spend money to do so and that he did not believe that it would change the vote in support of the civic center site. He felt that the Council needs to make a decision to move forward with a library at this time. He indicated that the Council has made other projects number 1 priorities in the past (e.g., the community and cultural center, the aquatics center). He felt that it was time to make the library the number 1 priority and move forward with it. It was his belief that it would be indecisive not to move forward at this time.

Mayor Pro Tempore Sellers stated that there are a variety of ways to proceed. He said that it is rare for him not to attend a Council meeting, in six years, only missing 2-3 meetings. He did miss the June 23 Council meeting. He felt that the easiest thing to do was for him to see what direction the crowd is going, jump in front and take the lead. He said that the political thing to do would be to place the issue

of the ballot this fall. However, he did not believe that either of these alternatives would necessarily be the right thing to do. He apologized to the public for the Council failing in one of its chief missions of developing a process whereby the Council makes decisions such that they are made as community. He stated that he often thought that the kinds of decisions that the Council make are only partly correct in what is derived. It is the way that the Council makes the decisions that is of most significance. If the Council makes the right decisions in the wrong way, the community will not be together and will develop acrimony and divisiveness. He did not believe that the community would understand why the Council made the decision that it made. He would like to develop a collaborative process, bringing individuals together to conduct the hard work of making decisions that are community decisions that are not based on “us against them.” He apologized to the community that the Council did not do its job as it should have been done. The Council did not bring people together, nor developed a process at the front end. He said that cards were placed at the library and other places in the downtown as an attempt to solicit community input. He felt that the Council needed to be more active than this and more forward thinking. He noted that the Council developed a significant process with the visioning process that included everybody. The Council brought the community together stating that individual’s input mattered. He felt that the Council needs to go back and develop the process.

Mayor Pro Tempore Sellers felt that the most significant issue that the Council needs to address is the entire civic center site. He did not know whether the City has done a good job in talking to the community and letting them know that the Council is not talking about rebuilding the existing library or adding on to the existing library. What is being discussed is moving to library to the opposite corner of the block, tucked up at Alkire and DeWitt. He said that the design for the library is beautiful at a cost of \$250,000 for the design. He felt that the City needs to deal with the entire site and how it is to evolve/develop. He stated that the entire civic center block is owned by the City and that it needs to be developed and considered by the City. He noted that the Council is looking at only one building, and moving it to one part of the site. It was his belief that a new city hall is needed sooner rather than later because the existing building is old and tired. However, he did not believe that there would be support from the community for a new city hall for obvious reasons. He stated that as responsible stewards of the civic trust for the next few years, the Council needs to consider the entire civic center site and not just the library site. An idea that has been suggested is to take the old library building and utilize it for public works staff. He felt that this makes sense because the City needs to bring public works staff together with the rest of the administrative staff. Organizationally, this is by far the smartest thing to do. He noted that this was not included in the petition, and that he suspects that it would have engendered some interesting results had it been included in the petitions. This is because you would be looking at adding more employees and public works equipment on a site that is surrounded by churches, schools and residencies. He noted that the City has not thought this issue through. He felt that it would be highly irresponsible to not give thought to where City hall should be. He agreed that the decision needs to be a much broader based decision, figuring the larger issue. He felt that a decision needs to be made quickly, indicating that he supported the civic center site in the past. He noted that the rules have changed and the issues have changed, thus the reason for reconsidering the location of the library. Had the City received state funding, this issue would have been decided. However, the City did not receive funding; therefore, the Council needed to reconsider significant things, not the least of which was funding.

Mayor Pro Tempore Sellers felt that the Council needs to: 1) develop processes that are much more collaborative and inclusive of the community; 2) figure out what will be done with city hall and all of the facilities, and not just what will be done with the library before making a final decision; 3) the Council has to identify the \$14.7 million funds specifically for the library. Also, setting aside \$3 million for the downtown improvements identified in the process; specifically, the Third Street area improvement and identification of additional parking. He noted that these improvements were identified in the Downtown Plan, they are appropriate redevelopment uses, and are items of extreme importance to the community. He agreed that a library is needed soon but that until the City figures out what it will do with the entire site and makes the appropriate planning decision in this regard, he did not believe that the City was doing the right thing by jumping on the band wagon based on public testimony. He recommended that the Council ask staff to go back and return with the best option for master planning the civic center site. He recommended that the Council set aside funding for the library so that the community knows that it has the money sitting there for a library. The Council needs to identify the balance of funds for the downtown improvements because this is a commitment made to the downtown.

Council Member Carr agreed that this is a difficult issue. He agreed with Council Member Tate that the Council has not had the opportunity to review all the emails received on this issue. He apologized for not getting back to all the citizens. He noted that staff copied the e-mails and that the Council has them before it. He also apologized for the misinformation provided or lack of information provided. He noted that Council Member Tate walked through all of the concerns and talked about the different ways to address these concerns. He agreed that both sites are good sites and that he does not see negatives on either one of the sites. He felt that either site will work and will provide a great library opportunity for Morgan Hill residents for years to come. However, he is basing this on some possible misinformation. He indicated that the Council has not investigated or answered these questions. He stated that he has consistently supported building a library as soon as possible, voting against funding other types of projects because he felt that the Council had to make a decision on the library to have it move forward as soon as possible. He voted to move forward with the site selection process on June 23 in order to start the investigation process, learn about all of the issues and identify the mitigations for the issues at either of the sites. He noted that the City has not done this yet. He too is concerned about the bigger aspect of the civic center. He indicated that the 50-year horizon for city hall is to move public works staff to the old library facility and construct a new library on the site. He did not know if this is the 50-year horizon for this block of land, indicating that he did not believe that the Council has discussed this enough. He appreciated the fact that Dr. Hatakeyama tied in libraries with education as this is one of the positions that he has had on this for a long time. He stated that one of the reasons that he wanted to open up this process in January was attributed to the fact that he has always been a strong supporter of trying to locate the new library on the Britton Middle School campus; either as a stand along library or in partnership with the School District. If the schools do not have the books and librarians needed today, he felt that a partnership with the School District at the middle school campus could be a great opportunity. It was his belief that a lot of the concerns about the downtown site could be mitigated. He felt that decisions are being based on poor information. He stated that he would like the Council to make good decisions based upon true and solid information. Regardless of what the information is, it may not change anyone's minds. It was his belief that the City needs to think about the entire site before moving forward with a \$14 million investment on a 50-year horizon on this site. Is this where the City wants all the services to be in the future and for this neighborhood? It was his hope that the Council would be

willing to have this dialogue this evening before casting a vote. He said that one of the reasons he did not vote to support carrying over the decision until this evening at the June 23 meeting was attributed to the fact that he wanted the Council to start the process of coming together behind a decision and rebuild the community in support of the position. He felt that the Council has done a great job of politically motivating individuals. It his hope that what he sees this evening is the new politics of Morgan Hill, where citizens get involved and spend time learning about issues and contacting their representatives and neighbors.

Mayor Kennedy thanked those in attendance for their comments and presentations this evening. He stated that citizen's comments, as well as Council Member Tate's comments and thoughts have been persuasive. He stated that he would throw his support behind the civic center site in order to move forward. He indicated that the Council has heard this discussion many times before. The Council has previously selected this site and reviewed many consultants report. He felt that it was time to make a decision as this site will work well. He stated that he would support Council Members Tate and Chang's position.

Action: *Council Member Tate made a motion, seconded by Council Member Chang, to move forward with the civic center site for the construction of a new library.*

Council Member Tate noted that the City does not earmark money for the master planning of the civic center. He inquired what assumptions can be made to being the planning process.

Council Member Carr noted that the Council found an additional \$7 million for the library which he felt was great. He indicated that he voted against funding other projects because it was his belief that there should be more money preserved for the library. He stated that Mayor Kennedy has talked about the next visioning process. The Council has discussed different items, including partnering with the School District. However, the Council has never talked about the future of the civic center. He felt that the Council needs to tie some of these things back together.

Mayor Kennedy indicated that over the years the Council talked a lot about the civic center and the need for a new city hall, including its location (e.g., downtown). He recommended that the City initiate a new vision or renew the vision for Morgan Hill. He noted that he did not receive much support when he suggested this. It was his hope that the Council can start the renewed vision process; looking at this very issue. He felt that it was time to move forward with the library as there is funding to do so. He recommended that the library and the indoor recreation center be completed as they are part of the vision. He noted that it has been stated that the library was one of the top 3 projects identified in the visioning process. He recommended that the Council move forward with the library and that the Council discuss where it wants city hall/civic center to be. This can be done in a collaborative process as was done in the visioning process. He did not believe that there was a reason to wait on the library to proceed with this vision.

Council Member Chang concurred with Mayor Kennedy's comments.

Mayor Pro Tempore Sellers stated that he will continue to push the discussion of figuring out what the City should do with the remaining facility. He did not believe that this was the appropriate way to plan. He felt that the Council still has a lot more work to do and that it needs to do a better job. He said that it was frustrating that it had to get to the point where individuals had to spend so much time and energy on their own time. He felt that the Council needs to do a better job in the future as it develops projects and brings people together, making this a collaborative process so that the City does not end up in a situation where well intentioned people are at odds with the decision. He stated that he would support the motion but felt that the Council needs to do a better job in the future in making decisions so that it does not waste people's time going through this process. Further, the Council needs to make clear to the public what other things need to take place.

Council Member Carr felt that it was important that the Council stay united/unanimous behind this issue so that it can move forward. He stated that he would support the motion as well, noting that either site would work well.

Vote: *The motion carried unanimously (5-0).*

Action: *On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the City Council unanimously (5-0) **Directed** Staff to Set August 18, 2004 as a Public Hearing for Consideration of Increased Library Development Impact Fees of \$750 for Single Family Units and \$614 for Multiple Family Units.*

ADJOURNMENT

There being no further business, Mayor/Chairman Kennedy adjourned the meeting at 10:02 p.m.

MINUTES RECORDED AND PREPARED BY:

IRMA TORREZ, CITY CLERK/AGENCY SECRETARY

**CITY OF MORGAN HILL
JOINT REGULAR REDEVELOPMENT,
SPECIAL CITY COUNCIL,
AND SPECIAL FINANCING AUTHORITY COMMISSION MEETING
MINUTES – JULY 28, 2004**

CALL TO ORDER

Chairman/Mayor/President Kennedy called the special meeting to order at 7:01 p.m.

ROLL CALL ATTENDANCE

Present: Agency/Council/Commission Members Carr, Chang, Sellers, Tate and
Chairperson/Mayor/President Kennedy
Late: Agency/Council/Commissioner Chang (arrived at 7:05 p.m.)

DECLARATION OF POSTING OF AGENDA

Agency & Commission Secretary/City Clerk Torrez certified that the meeting's agenda was duly noticed and posted in accordance with Government Code 54954.2.

SILENT INVOCATION

PLEDGE OF ALLEGIANCE

At the invitation of Chairman/Mayor/President Kennedy, John Tarvin, president of Morgan Hill Rotary, led the Pledge of Allegiance.

RECOGNITIONS

Mayor Kennedy presented a Certificate of Recognition to John Tarvin, President of the Morgan Hill Rotary Club, in gratitude for the Rotary Club organization's contribution of the fencing and screening for the Community and Cultural Center Rose Garden.

CITY COUNCIL SUBCOMMITTEE REPORT

OTHER REPORTS

City Manager Tewes indicated that the Council will be having a conversation later on the agenda about water conservation. The discussion will be on the quantity of water available versus the quality of water which he periodically reports. He indicated that the City monthly tests for the contaminant perchlorate. He said that this month's testing results are that all wells except two did not detect perchlorate. The two wells that did detect perchlorate (Condit and San Pedro wells) were found to be at 4 parts per billion, less than the State action level. He said that staff also conducts weekly testing for other things such as bacteria. He reported that in 40 samples taken over the past month, for the first time, the City has had

three of the samples show the presence of bacteria in the system. He informed the Council that staff immediately increased the chlorination in the system and took samples that were read the next day that showed no presence of bacteria. Because of these initial results, the City is required by the California Department of Health Services to inform the Council of the testing results and to its customers in the form of a printed advertisement in the local newspaper which will explain in detail what he has stated. He indicated that there is no cause for alarm as the issue was addressed immediately and that there is no bacterial contamination in the City's water system. He stated that should there be any member of the community who has concerns about perchlorate or any other issues relating to the city's water that may affect their health should consult their health professional. He stated that the City would be placing an ad in the newspaper in the next couple of days providing the required notice.

PUBLIC COMMENT

Chairman/Mayor/President Kennedy opened the floor to public comments for items not appearing on this evening's agenda.

Council Member Tate indicated that the next scheduled Council meeting will be August 18. He stated that on August 14, a significant event will be held in the community. He stated that the Guglielmo family will be honored at the annual Leadership Excellence Award dinner where they will be receiving this award. He encouraged individuals to purchase tickets, attend the event, and help honor the Guglielmo family as they are great contributors to the community.

Rocke Garcia, a local builder, informed the Council that he has been working with Scott Schilling and Dick Oliver on Ordinance No. 1641, the modified setback ordinance. He indicated that City Attorney Leichter has been working with his attorney to clear and rectify some of the issues that have come up. He stated that the modified setback dwelling units only apply to last year's Measure P allocations. If there is a project that has been designed with modified setbacks, they cannot be continued until Ordinance No. 1641 is amended. He requested that that Council provide policy direction that developers would not be required to submit both a modified setback dwelling units and attached units under Measure P or under any RPD submittals. He indicated that a pre Measure C meeting will be held and that he would be submitting an application for the balance of his project under the RPD as submitted before.

City Manager Tewes indicated that the underlying issue of Ordinance No. 1641 will be brought before the Council on August 18, 2004. If it is the Council's direction, staff would be happy to agendaize the questions raised this evening for policy direction. He noted that the discussion of Ordinance No. 1641 is not listed on the agenda; therefore, the Council cannot give staff direction this evening.

Dick Oliver stated that it was his understanding, at 2 or 3 council meetings ago that there was discussion about the modified setbacks and that the Council unanimously approved an extension to the provisions of Ordinance No. 1641. It was his understanding that the extension was adopted at that meeting and that developers were told later that the ordinance had not yet been amended. If developers have to design two different sets of plans, it would result in doubling the work and incurring a great deal of costs. He

said that developers are requesting that the Council provide policy direction to staff that the ordinance amendment is forthcoming. He said that it may not be until September that the Council approves an amendment to Ordinance No. 1641. He noted that developers will need to submit Measure C applications by October 1. He indicated that developers do not have the time to produce both types of plans in the short amount of time available. He requested that the Council direct staff to accept Measure C applications with modified setback designs.

Nathan Benich requested that the Council approve a beach volleyball court at the recreation center. He stated that he is an avid beach volleyball player. He said that the dimensions and cost for beach volleyball courts would be insignificant and can be tacked onto the recreation center. It was his belief that the cost to construct a beach volleyball court would be approximately \$5,000 and would include the materials, labor and construction of the court. Adding a beach volleyball court would add one more sport to the residents of Morgan Hill, and tournaments could be held locally.

Mayor Kennedy informed Mr. Benich that it was his understanding that beach volleyball courts are planned as part of the outdoor sports complex.

City Manager Tewes indicated that the adopted plan for the Condit Road outdoor sports complex would include several beach volleyball courts. He stated that it would be appropriate to forward Mr. Benich's comments to the Parks & Recreation Commission as they are reviewing the outdoor sports complex master plan at this time. He said that staff would convey Mr. Benich's interest to this Commission

Mayor Kennedy noted that Bruce Tichinin was in attendance to address the Council under public comment. He indicated that there were a couple of items under the consent calendar that the Council would be discussing; one item being item 4 regarding agreements with special counsel. He felt that it would be appropriate for Mr. Tichinin to address the Council under agenda item 4 rather than under public comment.

No further comments were offered.

Redevelopment Agency Action

CONSENT CALENDAR:

Action: *On a motion by Agency Member Tate and seconded by Vice-chairman Sellers, the Agency Board unanimously (5-0) **Approved** Consent Calendar Items 1 and 2 as follows:*

1. **PRELIMINARY JUNE 2004 REDEVELOPMENT AGENCY FINANCE & INVESTMENT REPORT**
Action: **Accepted** and **Filed** Report.
2. **EXPAND ELIGIBLE USES FOR THE SMALL BUSINESS FEE DEFERRAL PROGRAM**

Action: **Expanded** the Eligible Uses for the Small Business Fee Deferral Program to Include the In-Lieu Water Fee.

City Council Action

CONSENT CALENDAR:

Mayor Kennedy requested that item 8 be removed from the Consent Calendar and that it was his understanding that item 4 would be removed from the Consent calendar.

City Manager Tewes informed the Council that staff has provided the Council with a supplemental report under item 7, noting that the fiscal impact indicates that the City has withheld liquidated damages from the contract and that these additional funds may be available for the cost identified in the report. He indicated that additional information has been provided and that the recommendation remains the same.

Action: On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the City Council unanimously (5-0) **Approved** Consent Calendar Items 3, 5-7 as follows:

3. **PRELIMINARY JUNE 2004 CITY OF MORGAN HILL FINANCE & INVESTMENT REPORT**

Action: **Accepted** and **Filed** Report.

5. **VOTING DELEGATE FOR 2004 LEAGUE OF CALIFORNIA CITIES ANNUAL CONFERENCE**

Action: 1) **Approved** Appointment of Mayor Kennedy as the City's Voting Delegate, and Mayor Pro Tempore Sellers as the Alternate Voting Delegate, to the League of California Cities' Annual Conference; and 2) **Directed** the City Clerk to Complete the Voting Delegate Form and **Forward** Said Form to the League of California Cities.

6. **ACCEPTANCE OF MONTEREY ROAD/UNION PACIFIC RAILROAD (UPRR) UNDERCROSSING PEDESTRIAN AND BIKEWAY IMPROVEMENT PROJECT**

Action: 1) **Accepted** as Complete the Monterey Road/UPRR Undercrossing Pedestrian and Bikeway Improvement Project in the Final Amount of \$546,060; and 2) **Directed** the City Clerk to File the Notice of Completion with the County Recorder's Office.

7. **ACCEPTANCE OF THE CITY OF MORGAN HILL POLICE FACILITY PROJECT**

Action: 1) **Accepted** as Complete the Morgan Hill Police Facility Project in the Final Amount of \$1,813,000; 2) **Directed** the City Clerk to File a Notice of Completion with the County Recorder's Office; and 3) **Authorized** the City Manager to Negotiate, Prepare and Execute an Amendment to the Agreement with the Nicholson Company to Provide Additional Construction Management Services in an Amount Not to Exceed \$40,000; Subject to City Attorney Review and Approval.

4. AGREEMENTS WITH SPECIAL COUNSEL

Council Member Chang stated that she would be abstaining from participating on this issue. She excused herself from the Council Chambers.

City Attorney Leichter presented that staff report, indicating that there are three standard consultant agreements that the City enters into with special attorneys that the City retains to advise it on various matters. She stated that the aggregate amount of the three contracts is \$100,000, and that they have been brought before the Council for approval.

Bruce Tichinin stated that the Council proposes to spend approximately \$50,000 in public funds on an investigation that the Council first kept secret. The Council then rushed to get out a subcommittee report late Friday afternoon before a three day holiday weekend on the grounds that it wanted all the facts regarding this matter to be known as soon as possible. On the grounds that it was not public information, the Council refused to release the report prepared by the City's private investigator despite his official request and his statement to the Council that he needed a copy of the report to: 1) prepare for his defense against the proposal to condemn him and remove him from the urban limit line/greenbelt committee, 2) to refer him to the district attorney for criminal prosecution, and/or 3) refer him to the State Bar for discipline on his license to practice law. However, the Council condemned him on the basis of selectively releasing portions of the report that it has kept secret. He noted that the Council has been accused by an employee of a California Newspaper Association who is an expert on the Brown Act of having violated the law in all of the Council's prior secret meetings on this matter. The Council's response was to place on the public agenda the matter of paying for the secret report for the first time. By this response, he felt that it appears that the Council is signaling two things: 1) the Council agrees with the expert that the secret meetings were unlawful; and 2) the Council now intends to conduct all matters relating to this matter in public. He felt that the Council should now release to him and the public the investigators report and all documents in the City relating to this matter so that the public can see what it has paid \$50,000 for.

Mr. Tichinin stated that after reading the latest addition of the Morgan Hill Times, he was left with the impression that because the Council has incurred an additional \$50,000 in attorneys fees to keep the report secret, the Council may be intending to pay the City's attorneys for the continued effort to keep the report permanently secret. He requested that the Council immediately release the report and all the information the Council has on this matter. Further, he requested that the Council immediately finish the work of the subcommittee as it relates to him and cease what he believes is the Council's unconstitutional and retaliatory attempt to intimidate him in the exercise of his first amendment right to criticize the Council's conduct on this matter publicly and privately. He felt that this is what the Council is doing by taking no action on possible actions still left hanging regarding possible criminal referral and referral to the bar for discipline. He requested that the Council either resolve that he has violated no laws, that it would take no action to refer him, and that the matter is ended; or that the Council state the specific provisions of the penal code or rules of professional conduct for attorneys which it believes he has violated, the evidence that it believes shows these violations, how it does so and refer the matter to

the State Bar or district attorney.

Council Member Carr stated that Mr. Tichinin has raised some interesting questions which he believes that the Council will now have to ask legal counsel to look into and respond. He noted that Mr. Tichinin has requested that the Council subcommittee immediately wrap up its work. He felt that an easy way to do so is for Mr. Tichinin to participate in this and cooperate with the Council subcommittee. It was his hope that Mr. Tichinin will be willing to do so in order to wrap up this matter.

Mr. Tichinin stated that he would have been happy to work with the subcommittee had it cooperated with him initially instead of blind sighting him. He stated that the Council has not sought his comments and that it now has the information it is going to get from him. It was his belief that the Council was stalling again.

Mayor Kennedy stated that the Council will refer this matter to special counsel engaged for this purpose and respond to the questions raised by Mr. Tichinin.

Council Member Tate indicated that he has no comprehension of how the comments made by Mr. Tichinin relate to the item on the agenda. He noted that a contract is on the agenda and therefore does not believe that the Council can discuss the matter.

Mayor Pro Tempore Sellers stated that it was his understanding that Mr. Tichinin was questioning the allocation of the expenditures on this matter.

Mayor Kennedy stated that Mr. Tichinin's request was submitted under public comment. As Mr. Tichinin was challenging the expenditure of funds, it was his determination that Mr. Tichinin's comments would fall under item 4, agreements for expenditure of funds for litigation.

Council Member Tate questioned whether the Council could discuss Mr. Tichinin's comments because he does not believe that his comments relate to the contract.

Mayor Pro Tempore Sellers stated that it is rare for the Council to pull contracts from the consent calendar as contracts are considered fairly standard/routine. The reason the contracts were pulled from the consent calendar this evening was to make sure that the public had an opportunity to weigh in on the matter. He said that there are a few items related to this action item that are germane and felt that the public had a right to know about them. He stated that the Council began receiving legal counsel and that it has the authority to retain legal counsel at a cost up to \$20,000, noting that the Council is exceeding this amount. Therefore, the Council felt it appropriate to develop contracts with special counsel in three different areas; the significant of which is pending litigation that the Council is concerned about. He felt that it was important that the public understand that there has been a lot of discussion with inaccurate information in the press the past few weeks. He stated that the Council had two law firms to which it sought advice for Brown Act issues. He indicated that both firms specialize in the Brown Act issues, are very clear of the law on what the Council is allowed to do/not to do. The Council has sought their advice repeatedly and to do otherwise would have been irresponsible. He stated that a 10-minute review by

someone who works for an outside agency and is not familiar of the fundamental issues involved in this case would not be sufficient for the Council to change its mind. He felt that everyone in the City of Morgan Hill would have found it highly unusually and very suspect of the Council to proceed in a direction that was adverse to what the City's legal counsel and the two different legal firms had advised the Council to do. He indicated that this is one of the major reasons these firms were retained. They have advised the Council on a variety of matters; noting that the firms have thus far kept lawsuits from being filed. He stated that the Council is confident that it will be able to resolve this issue in a way that is appropriate for the City of Morgan Hill and the community. He stated that a determination was made, on the part of the subcommittee, to attach a \$50,000 price tag to its activities. The Council felt that it was important that the public was made aware that there is going to be an amount of money to be expended on these activities. He felt that the Council did the responsible thing and presented an estimation of \$50,000 in associated legal costs. He said that costs would accumulate and that once the exact costs are known, they would be made public.

Action: *On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the City Council, on a 4-0 vote with Council Member Chang absent: 1) **Approved** Three Agreements with Special Counsel; and 2) **Authorized** Mayor Kennedy to Execute Agreements.*

Council Member Chang resumed her seat on the Dias.

8. SPECIAL CITY COUNCIL MEETING MINUTES OF JULY 14, 2004

Mayor Kennedy indicated that he asked that this item be removed from the consent calendar in order to make some corrections to the minutes.

City Clerk Torrez informed the Council that minor typos have been identified and that they have been corrected per the supplemental handout, incorporating one other typo identified by Mayor Pro Tempore Sellers. She requested that the Council approve the Minutes, as amended.

Action: *On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the City Council unanimously (5-0) **Approved** the Minutes, as amended.*

City Council, Redevelopment Agency, and Financing Authority Commission Action

CONSENT CALENDAR:

Action: *On a motion by Agency/Council/Commission Member Tate and seconded by Vice-chair/Mayor Pro Tempore/Vice-president Sellers, the Agency Board/City Council/Commission unanimously (5-0) **Approved** Consent Calendar Items 9 as follows:*

9. **SPECIAL AND REGULAR CITY COUNCIL, SPECIAL REDEVELOPMENT AGENCY,
AND SPECIAL MORGAN HILL FINANCE AUTHORITY COMMISSION MINUTES
OF JULY 7, 2004**

Action: *Approved the Minutes as submitted.*

City Council Action

PUBLIC HEARINGS:

10. **ZONING AMENDMENT, ZA-04-07: DIGITAL-VENTURE PROFESSIONAL CENTER**
(Continued from July 21, 2004)

Planning Manager Rowe informed the Council that it continued this item last week at the request of the applicant as they needed additional time to review the traffic report. He informed the Council that the applicant is requesting a further continuance of this item to August 18. The request for additional time is to allow the applicant and public works staff to address the questions and concerns that the applicant has raised. He recommended that the Council open the public hearing and then continue this application to August 18, 2004.

Mayor Kennedy opened the public hearing. No comments were offered.

Action: *On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the City Council unanimously (5-0) **Continued** the public hearing to August 18, 2004.*

City Council Action

OTHER BUSINESS:

11. **STATUS OF THE RE-ESTABLISHMENT OF MEDICAL SERVICES.**

Mayor Kennedy opened the floor to public comment.

Joanne Allen presented the Council with an update on the status of the DePaul Health Center. She said that 11 of the 15 suites are occupied or reserved (over 70% occupancy). Medical services being provided at this time are: physical therapy, internal medicine, cardiology, family practice, pediatrics, and orthopedics. There are time shares for specialist as well as an office for digital imaging, diagnostic, and laboratory services. She indicated that they have been talking with a radiologist in conjunction with St. Louise Regional Hospital about diagnostic imaging. She stated that services to be provided under Phase I are diagnostic imaging and the medical offices. She said that they are in current discussions with two groups for ambulatory/urgent care services. Being investigated is the possibility of outpatient services which would include: diagnostic imaging, laboratory, radiology, sports medicine and laboratory surgery

(an outpatient surgery center). She stated that they are putting together the final touches on a feasibility study and is working with a consulting firm to finalize a business plan that strategically links St. Louise, O'Conner and the DePaul Health Center. She indicated that they are excited about the progress made to date. She informed the Council that most of the tenants have moved in or are moving in and that tenant improvements are occurring. She stated that a conference center has been completed and was made available to Leadership Morgan Hill. She indicated that the conference center will be made available to the public for health education and that physicians would be giving health education series.

Mayor Kennedy congratulated Ms. Allen and the O'Conner staff for their accomplishments, noting that it has been only a year since Ms. Allen has come on board. He indicated that the City appreciates the work that she has done with the medical office building at the DePaul Health Center in restoring Medical services.

No further comments were offered.

Action: *By consensus, the Council **Accepted** the Presentation Regarding Re-establishing Medical Services at the Former Saint Louise Hospital Campus.*

12. MEDICAL SERVICES POLICY AND OBJECTIVES.

City Manager Tewes presented the staff report, indicating that for approximately six years, the Council has been actively involved in the expansion/preservation of medical services in the community. In April 2000, the Council adopted a series of policy objectives and that at the most recent Council annual retreat, it was suggested that the policy statement be reviewed, updated, and revised as necessary. He stated that the Council appointed a subcommittee consisting of Mayor Kennedy and Mayor Pro Tempore Sellers who are recommending this evening a new formal policy document entitled "Policy and Objectives." The Policy and Objectives include a policy statement and incorporates a series of long term and short term objectives, including a new section regarding City government's role.

Mayor Kennedy indicated that the changes proposed are not major and felt that the policy statement is up to date and consistent with the plans that the Morgan Hill Community Health Foundation and the Daughter's of Charity, under O'Connor Hospital, are working on. He said that urgent care is an important medical activity that the Daughters of Charity are working on, and that they would be bringing this to fruition soon.

Vice-chairman Sellers concurred that the goal was to take what had become a somewhat convoluted series of proclamations on the part of the City. The subcommittee distilled them in order to make sure that the Council was clear about its objectives/policies to the community. He felt that it was important to include a statement and make it clear what the City's role is, part of which is to define what it had done. He noted that there is a reference in the last of the four sections that talks about the potential of facilitating a special district or the establishment of a new funding source. The subcommittee is suggesting that the Council take its lead from the Community Health Foundation as needs are identified. He did not believe that the subcommittee is proposing that the Council take any action this evening or in

the near future, but rather that the Council continue to work with the Community Health Foundation and identify resources that might be needed to further facilitate medical services.

Mayor Kennedy opened the floor to public comment.

Joe Mueller said that in looking at the medical center to move forward it needs to be understood that you need to look at a full range of services and that they be optimized. When the City looks at land use issues, it needs to be understood that profitable medical services help pay for none profitable medical services. How the City builds critical mass in the next few years will be critical. While the City is making progress, he did not believe that medical services are there yet and everyone needs to be conscience of this as medical services move forward. He noted that there is a synergy created by having uses locating close together. He felt that it was important to site medical services in areas that will take advantage of future growth.

No further comments were offered.

Council Member Tate stated that he likes the work that has been done by the subcommittee. He noted that the first page of the report states how the City got to where it is today, indicating that the City had a hospital that closed down because it provided more services than what was needed. He recommended that the policy statement reflect this fact. He felt that the policy statement states that the goal is to recruit anyone who can provide medical services. He did not believe that the City wants to overdue medical services to the point where there is competition that drives medical service providers out of business, loosing medical services again. He recommended that the policy statement include a statement that there has to be a balance of medical services. He inquired whether the City wants or needs more than one urgent care facility. The same question applies to laboratory, radiology and ambulatory surgery centers. He felt that a problem would be created if the community recruits medical services that would drive others out of business and that the community would loose out overall.

Mayor Pro Tempore Sellers stated that Council Member Tate's recommendation of making reference on how the City got to this point should be the first sentence, talking about the fact that Morgan Hill has suffered as a community due to a loss of a major medical facility. It could further be stated that the City is currently in the process of revitalization and reinstituting the facility followed by the sentence "...in order to guide the City of Morgan Hill supporting medical services." He indicated that it could be stated that the Council is anxious that it does not create an atmosphere where there is too much competition that ends up being at odds with the objectives contained in the policy. Another action the Council can take is to not explicitly state this goal but that it be an understanding that it will continue to be a goal. He indicated that the reason the subcommittee stated "one or more" was due to the fact that it did not want to preclude opportunities.

Mayor Kennedy indicated that at the last Morgan Hill Community Health Foundation meeting, there was discussion about the situation of competing facilities. He felt that these were issues more in the realm of the Health Foundation to provide the Council advice and direction. It was his belief that the role of government/Council in this case is not so much as to restrict competition or to make strong

statements favoring one service over another as this is the role of the Health Foundation working with the Daughters of Charity and other medical services providers. These groups can provide advice and direction to the Council. The Council can use this information as a means of achieving Council Member Tate's objectives. He agreed that a preface statement, talking about how the City got here would be helpful and would provide this history to future Council's. Therefore, he would support adding a preface/preparatory statement that talks about how the City got to this point.

Mayor Pro Tempore Sellers referred to short term objective number 2 recommending that "one or more" be deleted retaining "conveniently located..." He referred to the fourth bullet located at the bottom of the page. He noted that the first bullet reads "laboratory, radiology clinical services" and then talks about "and ambulatory one or more additional." He recommended that this be amended to read "laboratory, radiology, and clinical." Second bullet to read "ambulatory surgery centers." The third bullet to state "skilled nursing facility" followed by the fourth bullet point to read "physical therapy." These amendments would not place quantifiers to any of the bullet points.

Council Member Carr felt that it could be as simple as word smithing under the medical services policy. He recommended that it be stated that the City wants to encourage an appropriate amount of medical service providers. He felt that the short term objectives should be short term. Therefore, he did not believe that the ability to attract two urgent care centers in the next two years would be feasible. He recommended that the Council discuss minimum activities under short term objectives as addressed by Mayor Pro Tempore Sellers. Under long term objectives, he said that item 3 could discuss the appropriate expansion of the short term objectives such as the right time to have an additional ambulatory surgery center and skilled nursing facility, noting that these are long term objectives to expand upon the short term objectives.

Council Member Tate addressed the role of local government, referring to the second paragraph, the sentence that reads "Physician recruitment remains the City's top priority." In listening to Ms. Allen, he was under the impression that perhaps urgent care was moving up to top priority. He inquired whether the Council wants to include/identify in the policy its top priority. He acknowledged that the priority(ies) would change over time.

Mayor Pro Tempore Sellers clarified that the second paragraph references the funds that have been allocated to date. He said that the subcommittee included this statement because it wanted to make a specific reference. He indicated that when the Council allocated the funds, it specifically stated that the funds were to be used for physician recruitment and therefore, the statement reiterates this point.

Mayor Kennedy said that as the City has spoken to various medical providers, it was felt that the number one way of restoring medical services is to bring additional primary care physicians to the area/facility, as they will bring on board all of the other ancillary services.

Council Member Tate supported Mayor Pro Tempore Sellers' recommendation of clarifying that it was the Council's priority to recruit primary care physicians to get medical services started. However, he felt that the priority may change over time. He felt that when someone reads the medical services objectives

10-years from now, it may be felt that physician recruitment remains the top priority.

Mayor Kennedy clarified that the goal to recruit primary care physicians was for the dollars that have been expended.

Council Member Carr noted that the Medical Health Foundation still has money that the Council allocated 2+ years ago where the Council stated that these dollars were to be used for physician recruitment.

Council Member Tate noted that the objectives discuss raising other funds through public means. It may be that the top priority for these funds may be physician recruitment. He stated that he would like the objective phrased in a manner that states that the top priority will change in the future.

Mayor Kennedy recommended that the word “remain” be replaced with the word to “currently” or “presently is the City’s top priority.”

Council Member Tate supported this modification. He stated that he would prefer not to include the last paragraph. He felt that as proposals come forward from the Health Foundation, the Council will entertain the proposals and make decisions as they come forward.

Mayor Kennedy and Pro Tempore Sellers supported deleting the last bullet point.

Council Member Chang stated that she supported Council Member Tate’s comments about balance and including a statement of how the City got to this point. She would like it to be stated that the Council wanted to achieve viable medical services in the future and that there not be too many medical services provided such that medical services is no longer viable and lasting.

Council Member Carr concurred with Council Member Tate in the recommendation to delete the last paragraph.

Mayor Pro Tempore Sellers inquired whether it would be the preference of the Council that the subcommittee go back and rework the medical services objectives, returning with the changes for Council approval, indicating that he did not want to prolong the process.

Council Member Tate suggested that the subcommittee return with the identified medications to the Council on its consent calendar.

Glenda Garcia indicated that she serves on the Medical Services Health Foundation as well as serving on the Citizens Advisory Board. She stated that she concurred with some of the statements expressed by Council Member Tate. She felt that there was an unbelievable future with the Daughters of Charity’s envision for the hospital site. She stated that there is a lot of activity taking place and that there is a great commitment from the Daughters of Charity to get the medical services moving forward.

Action: *It was the consensus of the Council **to direct** the subcommittee to make the identified modifications to the medical services policy and objectives.*

13. WATER SUPPLY SHORTAGE OPERATIONS PLAN.

Director of Public Works Ashcraft presented the staff report. He indicated that the City is continuing in a water supply condition where the demand is close to exceeding supply mainly caused by the perchlorate contamination problem. He said that the perchlorate contamination has hampered the City's effort to find new wells because so much of the valley floors are contaminated or could be contaminated with perchlorate. Therefore, it is difficult to find a site for a well. He informed the Council that staff has a draft water conservation plan that suggests four stages of emergency, indicating that the first stage would be called urgent, a state where the City finds itself at this time. He informed the Council that this stage forced the City to turn on a well that has been off over 1.5 years due to perchlorate readings, although it did not exceed the action level. He indicated that now that the Dunne 2 well has been on for the past 2 weeks; the City is able to meet the community's water demand. He stated that the City cut back all of its park irrigation by 50% the past two weeks. He did not believe that there was any doubt that the City would go over the demand it is experiencing before the summer is out. Stage 2 would be a critical condition where the City would cut parks irrigation by the remaining 50% and turn on the Main 1 well for a short term. The spray ground at the aquatics center would be turned off and that the City would be asking its largest irrigation users in the community who have volunteered to help the City to cut its irrigation demand by 50%. These actions would result in reducing peak demands by approximately 1 million gallons per day. The emergency stage would be a situation where the City would have to eliminate the parks irrigation, keep the spray ground off and institute mandatory measures that could include turning off the largest water meters in the City's irrigational accounts. He stated that these actions would greatly reduce the total demand.

In response to Mayor Kennedy's question, Mr. Ashcraft indicated that the City's water master plan projects water usage out through the build out of the General Plan (2025-2030). He stated that the water master plan states that the City needs one new well every five years and three wells producing approximately 1,000 gallons per minute that will meet the City's build out demand. However, staff has recently learned that perchlorate contamination has greatly hampered the City's ability to site new wells and has placed a few wells out of service. Therefore, it is the perchlorate contamination that is affecting the City's existing wells as well as affecting the City's ability to site new wells.

Mayor Kennedy opened the floor to public comment. No comments were offered.

Action: *On a motion by Mayor Pro Tempore Sellers and seconded by Council Member Tate, the City Council unanimously (5-0): 1) **Approved** the Draft Plan and 2) **Directed** staff to return to Council with the required resolution making emergency findings to implement the plan to protect public health and safety when water shortages occur.*

Redevelopment Agency Action

OTHER BUSINESS:

14. ROYAL COURT HOUSING PROJECT

Director of Business Assistance and Housing Services Toy presented that staff report, indicating that staff and South County Housing are requesting direction on the revised design concept for the Royal Court Housing project, specifically on four key issues: 1) saving the Royal Court motel buildings and moving them to the northeast corner of the site, incorporating the units into studio apartments and the elimination of the commercial portion of the project along Monterey Road; 2) reducing the townhomes from 16 units to 12 units; 3) the overall design of the project (proposing a craftsman style where the units located along Monterey Road are of a bungalow design); and 4) recognition that the project will require variances to the existing zoning in order to maintain project densities. He indicated that the Planning Commission appointed a subcommittee who has worked with staff and South County Housing in the review of the design, and are supportive of the project. They will work closely to help address the variance issues. He informed the Council that the Shell Gas Station is not a part of the project at this time. He stated that the City talked at one point about trying to acquire the gas station site but that the property owner did not express an interest in selling it. He indicated that staff will talk to the property owners once again to see if they are interested in selling the property as the use has closed down.

Jan Lindenthal informed the Council that the South County Housing design team met with the Planning Commission subcommittee 1.5 weeks ago. She indicated that one of the Planning Commissioners mentioned that the gas station was listed for sale. She contacted the property owner, indicating that the property owner received four proposals. As all offers were over the asking price, the property owner did not accept any of the offers and raised the sale price 1/3 higher than the original asking price. She said that it may be apparent that a gas station at this corner is desirable and therefore there is not an opportunity to compete against the sale price.

Ms. Lindenthal walked the Council back to where South County Housing started in the design of the project. She said that when the issue of the potential historic significance of the Royal Court Motel came up, a study session was conducted with the Council in April 2004. At that time, the Council reviewed two alternatives: 1) keeping the motel in its current location or 2) moving it on the site. The Council raised several issues at that time. One issue was the relationship between the buildings and how to make them work. Another issue was the density of the 16 townhomes to be sited along Del Monte Avenue. She stated that she met with the Historical Society and that it was the consensus of this group that the buildings were historic. She informed the Council that it is difficult to design several studio apartments due to financing as it would result in the rest of the apartments being 2-3 bedrooms. The Historical Society suggested that South County Housing save a portion of the historical buildings in order to retain the historic character. She said that if there were some acceptable tradeoffs that you would get from this in terms of usable open space and a better unit mix, that it would make the project financially feasible. She addressed various design scenarios. She stated that the design team met with the Planning Commission subcommittee in order to receive their input. She indicated that there was a difference in

opinion about preserving existing buildings. Concerns raised by the Planning Commission subcommittee include the following: usability/quality of the open space on site; circulation; and transition from Monterey Road to the interior of the site. She informed the Council that the subcommittee recommended that she consider removing one or both of the larger elm trees located on site in order to create a better site layout for the single family homes. He indicated that it is being proposed to go from 16 townhomes to 12 modified attached homes. It was also suggested that rather than building out all of the required parking under the City's zoning ordinance, that she look at building out only the parking that is needed and reserve the rest in landscaped area. She informed the Council that this is something that she has done twice in Santa Clara County with great success. In projects that South County Housing has developed, she has not found with the reduced parking areas are fully parked on site. She indicated that surveys were conducted during the day and evenings to see how many parking spaces are actually used. It was found that on average; only 2/3 of the parking provided was utilized at peak times. She felt that there was an opportunity to look at the site plan and create reserved parking, creating an opportunity that is a win win situation for all. If parking is needed, the open space can be converted to parking spaces.

Ms. Lindenthal informed the Council that the Planning Commission subcommittee expressed concern regarding the location of a parking lot. It was suggested that a building be moved over, siting the parking in the middle of the project in order to improve circulation. Two plans were designed in response to the subcommittee's recommendation. She requested Council direction in order to proceed with the planning approval process. She said that it is South County Housing's recommendation that the Council allow them to proceed with the 12-detached single family homes as part of phase I and then proceed with a version of a plan for the rental component of the project where they take a more careful look at the reserved parking areas and how best to maximize parking. She said that South County Housing would set aside funds needed to pave the parking areas in the future if a parking survey found that parking is tight. She presented the Council elevations of the modified attached homes proposed along Del Monte Avenue and elevations for the Monterey Road six plex apartment units. She felt that she has a successful solution to preserving the existing buildings; coming up with a new building adjacent to the existing buildings that bring forth the best elements of the Royal Court Apartment buildings.

Chairman Kennedy noted that the existing Royal Court apartment units have curves in the roofline/garage door lines. He did not see this element incorporated into the proposed new units.

David Sinden, KTGJ Architects, indicated that he was trying to design a building that was compatible but not trying to copy the existing design. He said that there are certain elements in the hotel that he did not incorporate into the design and vice versa. It was his belief that the buildings were compatible and would be nice neighbors as they are of a similar scale and massing. He informed the Council that the buildings would not have the appearance of a flat roof. He said that the roof would have a parapet and a sloped roof behind the parapet to mitigate drainage.

Vice-chair Sellers noted that it is being proposed to eliminate some of the existing Royal Court apartments, retaining what South County Housing could, pulling them closer together. He requested an

overview of what is being proposed for the buildings.

Ms. Lindenthal said that what is being proposed is to take two units off the back of each building and shift them to the front of Monterey Road. She would keep the appearance of a garage door but that it would be living space in the units. She clarified that the units would remain as studios but that the units would be larger than they are at this time, encroaching into the garage space. She stated that the key is to retain the exterior design.

Agency Member Tate inquired whether the project could be reconfigured in order to add a couple of bedrooms.

Chairman Kennedy inquired whether it was felt that the Council was asking for something that will not work. In reviewing the design alternative, he did not believe that the historical significance of the units is being saved. He did not believe that the design is accomplishing the Council's objectives.

Ms. Lindenthal indicated that one of the Planning Commissioners serving on the subcommittee suggested that either all units be saved or that none of them be saved. She stated that when she met with the Council in study session, it was the consensus of the majority of the Council that there was an opportunity to preserve a piece of Morgan Hill's history. She indicated that this was the significance of the existing buildings and not their architectural character. Everyone agreed that there has to be a historical way to tie the project to the Royal Court motel. Given this direction, she felt that she has come up with a successful solution and felt that the project would work. She stated that the two buildings, oriented as proposed with a courtyard in between, will provide a nice environment. She expressed concern with what may be found when the buildings are lifted in order to move them. It could result in not being able to save the buildings, resulting in the reconstruction of the units as was done at the Skeels Hotel. She informed the Council that there are 10 units that are historic in nature contained in the five unit buildings. She noted that the other buildings on site have no significance and will be demolished. She informed the Council that South County Housing has almost vacated the entire Royal Court Motel, with families receiving relocation benefits. She indicated that she would like to proceed with the planning approval process, noting that she has a long way to go. She indicated that the elimination of the commercial space makes the project financially feasible as the commercial space cannot be underwritten for purposes of sizing a permanent loan. It was felt that a mixed use building could work, not withstanding this. She said that the reconstruction of the existing units would be more financially feasible. She acknowledged that the mixed use space character would be lost on Monterey Road with the elimination of the commercial space.

Chairman Kennedy noted that it is being requested that South County Housing be allowed to save six units as modified, reducing the number of townhomes from 16 to 12, approval of a craftsman style design as presented this evening, and consideration be given to the variances needed to complete the project.

In response to Agency Member Carr's question, Ms. Lindenthal indicated that thought was given to converting the Royal Court apartment studios into commercial space and saving the facade. There was a

challenge of not being able to change the exterior because it would lose its historical character. It would not result in viable retail space as no one would know that the business exists based on the inability to install windows large enough to know that a commercial business exists. Also, the buildings could not be oriented toward the street and that the building would have to be perpendicular to the street. It was concluded that this would not be a viable solution. She indicated that a conclusion was reached that if they had to preserve the existing buildings, the commercial component would need to be eliminated because it would not work. In order to make the commercial use work, a two story building would need to be designed with retail on the ground floor and residential units above. She noted that parking was an issue as well.

Agency Member Carr stated that it was disappointing to lose the commercial aspect of the design as this was one of the enticing and exciting part of the project; keeping some of the mixed use along Monterey Road that is discussed in the newly adopted General Plan. He felt that the Council needs to figure out how commercial can be incorporated into the project, especially with Ms. Lindenthal's thoughts on how to reduce some of the parking demands. Therefore, it may be that parking is not a big issue any longer. He stated that the massing and scale next remains an issue but felt that the City can figure out a solution to incorporate commercial space in the project.

Ms. Lindenthal stated that the project cannot have it all. If you are going to preserve Royal Court, it places a substantial burden on the project in terms of all of the potential logistical issues associated with moving and reconstructing the buildings. She felt that South County Housing would be asked too much to try and convert the building into a mixed use, incorporating commercial space.

Vice-chairman Sellers felt that everyone is struggling with achieving a balance. He noted that the Historical Society weighed in on the review of the project and felt that Royal Court was worth preserving. He felt that the Council needs to understand that incorporation of commercial space in the project would be a battle to be undertaken. He stated that he shares the desire to have commercial along Monterey Road from the railroad tracks to Main Avenue. He noted that this stretch of Monterey Road has residential, commercial and mixed use interspersed. Therefore, it would not be an aberration to have residential along Monterey Road. He said that preserving the buildings in their current form, reducing the buildings by four and moving them closer together appears to be a good idea in order to make the project viable. He liked the parking idea in particular. He stated that he was anxious about the parking availability on Del Monte. However, he felt that the parking would be sufficient for 30 units. He requested that the roof material be toned down as the drawings appear to be massive. If parking spaces can be reduced, he felt that the public/open spaces would be valuable and would make it a precedent for subsequent projects in Morgan Hill. Therefore, he would be anxious to see how well this works and recommended that the parking/open space be monitored.

Agency Member Tate stated his concurrence with the comments as expressed by Vice-chair Sellers. He said that he was not enamored with the hotel but given that there is a constraint of retaining the Royal Court apartment units, he felt that everything that South County Housing has done is the best possible solution for the site. He supported the mixed use concept but that he did not see how it can be incorporated, especially if you cannot tie in the motel. It was his opinion that South County Housing was

on the right track.

Chairman Kennedy agreed with the comments that have been made, especially if you can use the open space for future parking. If the City is able to approve the variances necessary, it would allow the project to retain the open space, monitoring the parking needs. If it is found that additional parking is needed, the open space could be converted into parking. He said that this was a tough project to deal with and that under the circumstances, he felt that the City got the best design that it could hope for in the project presented this evening.

Action: *No action taken. Council comments as provided above.*

City Council Action

OTHER BUSINESS: (CONTINUED)

15. STATUS OF TRANSPORTATION IMPACT ANALYSIS FOR THE DOWNTOWN PLAN

Planning Manager Rowe presented the staff report, indicating that the City's environmental consultant recommends that the Council hold a workshop during the 30-day public review period that will begin on October 8, 2004 to review the results of the transportation analysis in context with all the other environmental issues as opposed to looking at the traffic study separately. He recommended that the Council schedule a workshop between October 8 and November 12 to review the recommendations.

Mayor Kennedy opened the floor to public comment. No comments were offered.

Mayor Pro Tempore Sellers noted that funding has not been identified for the implementation of traffic calming measures should the Council decide to implement these measures (e.g., reducing Monterey Road to one lane in each direction). He inquired whether the analysis/study would provide the Council with an idea of what it would cost to implement traffic calming measures.

Planning Manager Rowe responded that the report to be presented to the Council would include cost estimates for the various alternatives for lane closures and other traffic calming means that can be used.

City Manager Tewes informed the Council that the adopted Redevelopment Agency budget has set aside \$100,000 for the implementation of traffic calming measures on Monterey Road. He noted that this is a minimal amount. However, if it is the Council's direction to only set up delineators and perform some stripping, this funding can accomplish these measures. Among the options to be considered at the workshop is not just whether to restrict the lanes to one in each direction but how to do this.

Mayor Kennedy felt that it was important that the Council move quickly on this item as it is something that could improve the viability of the downtown.

Action: *On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the City Council unanimously (5-0) **Directed** staff to schedule a workshop on October 13, 2004 at 6:00 p.m. to review the results of the traffic study for the Downtown Plan.*

16. URBAN LIMIT LINE STUDY: CITY COUNCIL PARTICIPATION IN STUDY PROCESS

Contract Planner Bischoff presented the staff report. He said that by September 2004 there should be a preliminary recommendation from the Urban Limit Line Advisory Committee available for Council review. He stated that the Committee felt that this would be a good time to check in with the Council and receive its feedback as to whether or not the Committee and subcommittee are heading in the right direction. He informed the Council that by November the full committee will have completed its work, looking at greenbelts throughout the City as well as various implementation measures for the greenbelts. The Committee will have completed its work on the southeast quadrant of the city as well. It is at this point that staff/committee will develop a draft package of recommendations on the overall greenbelt plan before going out for public comment on the work that the committee has done. Should the Council agree that the committee is heading in the right direction; the City would hold a public workshop and actively solicit participation from individuals throughout the community to receive feedback on the plan. He indicated that it is being recommended that there be two points of Council involvement: 1) in September as a regular agenda item; and 2) a November 2004 workshop in advance of a regular City Council meeting.

Mayor Kennedy opened the floor to public comment. No comments were offered.

Action: *On a motion by Council Member Tate and seconded by Council Member Chang, the City Council unanimously (5-0) **Accepted** the recommendation of the Urban Limit Line Advisory Committee for City Council participation in the Urban Limit Line study process.*

17. APPOINTMENT TO THE CITY'S NOVEMBER 2006 CENTENNIAL PLANNING STEERING COMMITTEE.

Mayor Kennedy recommended that there be an entire year of celebration.

Council Member Tate indicated that he was asked by his recommended appointee as to the time commitment. He indicated that the Historical Society is planning to start the celebration in November 2005 with a year's worth of celebration activities leading up to November 2006. He stated that the Historical Society would conduct the planning of the activities, noting that there would be multiple activities. This was his understanding of what the Council would be asking the appointees to undertake.

Mayor Kennedy recommended that the Council appoint a 7-member steering committee. This committee is to start the process of what the plan is to be. This would include an organization, a timeline, and identifying the goals and plans for the celebration. He felt that the committee would be

developing a plan for the planning of a year long centennial celebration. He felt that a formal celebration committee would be along the line of with what the IDI organization does. He indicated that the organization would have different groups conducting different parts of the preparation of the centennial celebration. He felt that all segments of the community need to be a part of this organization. He felt that this would include groups such as the Chamber of Commerce, churches, ethnic communities, Sister Cities committee, and the various service clubs (e.g. Rotary, Lions Club, etc.). He felt that it would be good to have an advisory committee of the Historical Society founding members of the community such as Elena Moreno, Carol Holzgrafe, Anita Mason and others who often attend the Founders Day dinner. He looks at this as a much broader celebration than just the historical celebration; it's a celebration of the entire community. It would be the steering committee's role to put together the plan for the plan. He suggested that the steering committee return to the Council with recommendations by December 2004 of how to structure the plan, the organization and the timeline. He recommended that Brad Jones, Marilyn Libers and Jennifer Tate be appointed to the centennial planning steering committee.

Council Member Chang indicated that she would recommend the appointment of Lorraine Welk. However, she would reserve the right to be able to appoint a different person should Ms. Welk decide not to undertake this assignment.

Council Member Carr indicated that he has spoken to a couple of individuals but that he is not recommending appointment at this time as there are outstanding questions. He said that the structure as outlined by Mayor Kennedy is different from what he was thinking about a celebration. He inquired why Council Member Tate contacted a representative of the Historical Society to find out their thoughts on how to plan for the City's centennial celebration. He said that there may be other groups that are planning a centennial celebration that the City is not aware of. He felt that there may be other things that the Council needs to think about before asking individuals to proceed with work. If the Council is to appoint individuals to a committee, he inquired whether the Council would be providing funding. He stated that he would hate to ask someone to do something where they did not have a lot of support. He felt that there were a couple of things that the Council needs to think through before sending a group off to undertake a task.

Mayor Kennedy indicated that it would be his request that there be two members of the City Council serving as liaison to the committee. The City is to provide a meeting place and a staff person to attend the meetings. He did not believe that funding of the steering committee is necessary at this point. He said that it may be a part of the mission of the steering committee to establish a budget for the entire centennial program. He would like to see the centennial celebration planning started. He does not envision the mission of the steering committee to conduct the entire planning and perform the entire work, but to put the plan in place, the timeline, the budget, and the organization. The steering committee is to report back to the Council with their recommendations on how to proceed.

Mayor Pro Tempore Sellers said that this information has been helpful. He indicated that he has not made a final selection of a recommended appointment as he wanted to get a sense of what he would be asking someone to do. He recommended that appointments be forward to the City Clerk.

OPPORTUNITY FOR PUBLIC COMMENT

Chairman/Mayor Kennedy opened the Closed Session items to public comment. No comments were offered.

ADJOURN TO CLOSED SESSION

Chairman/Mayor adjourned the meeting to Closed Session at 9:25 p.m.

RECONVENE

Chairman/Mayor Kennedy reconvened the meeting at 9:54 p.m.

CLOSED SESSION ANNOUNCEMENT

Mayor/Chairman Kennedy announced that no reportable action was taken in closed session.

ADJOURNMENT

There being no further business, Chairman/Mayor Kennedy adjourned the meeting at 9:55 p.m.

MINUTES RECORDED AND PREPARED BY:

IRMA TORREZ, CITY CLERK
AGENCY/COMMISSION SECRETARY



CITY COUNCIL STAFF REPORT

MEETING DATE: AUGUST 18, 2004

APPROVAL OF JOINT USE AGREEMENT FOR WEST LITTLE LLAGAS CREEK TRAIL

RECOMMENDED ACTION(S): Approve attached Joint Use Agreement with Santa Clara Valley Water District for West Little Llagas Creek Trail.

EXECUTIVE SUMMARY: On March 21, 2001, Council approved a Resolution supporting grant funding for constructing approximately 500 linear feet of the West Little Llagas Creek Trail beginning from West Edmundson and traveling south along the westerly bank of Llagas Creek. The trail consisted of a paved Class 1 bike path, connecting West Edmundson to an existing paved trail system.

The City applied for and later received a grant from the VTA for TDA Article 3 funds totaling \$50,000. The trail was completed in early 2003 within the Water District's Right-of-Way for \$30,561. The Water District allowed the project to move forward but stated that either the old Joint Use Agreement (JUA) or a new JUA would need to be created for the trail extension. Since the original JUA was adopted on September 17, 1986, the Water District and City negotiated the attached new agreement.

FISCAL IMPACT: No fiscal impact.

Agenda Item #24

Prepared By:

Associate Engineer

Approved By:

Public Works Director

Submitted By:

City Manager



CITY COUNCIL STAFF REPORT

MEETING DATE: *August 18, 2004*

Agenda Item # 25

Prepared By:

Associate Planner

Approved By:

Planning Manager

Submitted By:

City Manager

ZA-04-07: DIGITAL – VENTURE PROFESSIONAL CENTER

RECOMMENDED ACTION(S):

1. Open/close Public Hearing
2. Approve Mitigated Negative Declaration
3. Waive the First and Second Reading of Ordinance
4. Introduce Ordinance

EXECUTIVE SUMMARY: The applicant is requesting approval to modify the list of permitted uses for an approximate 9.4-acre area in the Morgan Hill Ranch Business Park to allow for medical/dental and general office uses.

Approximately half of the site is currently developed with light industrial buildings. The remaining portion of the site is proposed for development of a 39,140-sf medical/dental office building and a 21,878-sf office building.

Approval of the proposed project would result in the conversion of industrial land to non-industrial uses. This is an important issue to consider given the City's limited supply of vacant industrial land. The trade-off to the loss of industrial land would be the creation of opportunities for local physicians and practitioners to own their own medical/dental offices. As part of the project, the applicant proposes to create office condominiums within the proposed buildings. By doing so, practitioners will be able to purchase office space as opposed to leasing, creating greater incentive for local practitioners to stay in Morgan Hill.

At the August 10 Planning Commission meeting, the Commission recommended approval of the zoning amendment request by a 4-1 vote, with one member absent (one Commissioner stepped down due to a possible conflict of interest). The action included recommending approval to allow a MRI facility within the proposed development.

The Commission also recommended changes to the mitigated Negative Declaration. Specifically, a traffic mitigation measure requiring the construction of Sutter Place between Butterfield Boulevard and Digital Drive was deferred subject to installation of a temporary traffic signal at the Butterfield/Jarvis South/Digital North intersection, and a condition was modified to require median channelization at the Butterfield/Jarvis South/Digital North intersection once Sutter Place was constructed. It should be noted that a condition was also added requiring sufficient right-of-way along Sutter Boulevard and Sutter Place to accommodate required lane configurations at the Butterfield approaches. The need for this requirement was not identified until later in the evening during discussions for a subsequent application. Therefore, Staff recommends adoption of the mitigated Negative Declaration, as amended, with the changes recommended by the Planning Commission and the additional mitigation measure for the required right-of-way along Sutter Boulevard and Sutter Place.

Minutes from the August 10 Commission meeting were not available in time for the preparation of this report. However, a copy of the August 10 staff report is attached for the Council's reference.

FISCAL IMPACT: None. Filing fees were paid to the City to cover the cost of processing these applications.

ORDINANCE NO. , NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO ORDINANCE NO. 1474, NEW SERIES, AMENDING THE LIST OF PERMITTED USES FOR DIGITAL ISLAND OF THE MORGAN HILL RANCH BUSINESS PARK TO ALLOW GENERAL OFFICE USES AND UP TO 40,000 SQUARE FEET OF MEDICAL/DENTAL OFFICE USES (APNs 726-25-080 thru - 082) (ZA-04-07: DIGITAL – VENTURE PROFESSIONAL CENTER)

THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY ORDAIN AS FOLLOWS:

- SECTION 1.** The proposed zoning amendment is consistent with the Zoning Ordinance and the General Plan.
- SECTION 2.** The zone change is required in order to serve the public convenience, necessity and general welfare as provided in Section 18.62.050 of the Municipal Code.
- SECTION 3.** An environmental initial study has been prepared for this application and has been found complete, correct and in substantial compliance with the requirements of California Environmental Quality Act. A mitigated Negative Declaration will be filed.
- SECTION 4.** The City Council finds that the proposed amendments to the Planned Unit Development District are consistent with the criteria specified in Chapter 18.30 of the Morgan Hill Municipal Code.
- SECTION 5.** The City Council hereby approves a precise development plan as contained in that certain series of documents date stamped July 9, 2004, on file in the Community Development Department, entitled “Venture Professional Center” prepared by Ware Malcomb. These documents, as amended by site and architectural review, show the location and sizes of all lots in this development and the location of all proposed buildings, vehicle and pedestrian circulation ways, recreational amenities, parking areas, landscape areas and any other purposeful uses on the project.
- SECTION 6.** The Council hereby approves an amendment to the list of allowable uses within Lots 1, 2 and 3 of Digital Island, as shown on the attached zoning plat (Exhibit A), to include those uses identified in the attached Exhibit B.
- SECTION 7.** Approval of this zoning amendment request shall not become effective until such time that the applicant (Morgan Hill Development Partners) cures all defaults of any subdivision improvement agreement; development agreement, including but not limited to payment of assessments, penalties and interest; and/or any other agreements between the applicant and the City of Morgan Hill.

SECTION 8. Severability. If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

SECTION 9. Effective Date; Publication. This Ordinance shall take effect from and after thirty (30) days after the date of its adoption. The City Clerk is hereby directed to publish this ordinance pursuant to §36933 of the Government Code.

The foregoing ordinance was introduced at the regular meeting of the City Council of the City of Morgan Hill held on the 18th Day of August 2004, and was finally adopted at a regular meeting of said Council on the 1st Day of September 2004, and said ordinance was duly passed and adopted in accordance with law by the following vote:

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:

ATTEST:

APPROVED:

Irma Torrez, City Clerk

Dennis Kennedy, Mayor

∞ CERTIFICATE OF THE CITY CLERK ∞

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. , New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 1st Day of September 2004.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

IRMA TORREZ, City Clerk

EXHIBIT B

ALLOWED USES FOR DIGITAL ISLAND VENTURE PROFESSIONAL CENTER

PERMITTED USES

Lots 1, 2 and 3:

1. All uses permitted in the ML, Light Industrial Zoning District as in effect on January 30, 1980, or as amended to consider other allowable uses; Private Recreation uses for Park employees.
2. 'Medical, dental, research, experimental, film or testing laboratories' shall include only those facilities where analysis testing is completed and no patient contact is involved.
3. All permitted uses allowed in the CO, Administrative Office District as in effect on July 28, 2004, with the following exceptions:
 - a. 'Educational services' shall be a conditional use (see below).
 - b. 'Health services, exclusive of hospitals' shall be prohibited except as specifically allowed by this ordinance.
 - c. 'Social services, except residential care' shall also exclude day care services.
4. All Group I and Group E Occupancies are strictly prohibited.

Building 1 on Lot 3 Only (up to a maximum of 40,000 sf):

1. Professional offices, which shall be defined as follows: An office from which and at which a doctor, lawyer, engineer, architect, accountant or similar professional persons may offer services.
2. A maximum of five patients undergoing minor medical procedures that require general anesthesia or that may render a patient incapable of unassisted self-preservation shall occupy the building at any given time.
3. MRI (Magnetic Resonance Imaging) facility

CONDITIONAL USES - The following uses shall require review and approval by the Morgan Hill Planning Commission

Lots 1, 2 and 3:

1. All uses conditionally permitted in the ML, Light Industrial Zoning District as in effect on January 30, 1980, or as amended to consider other allowable uses.
2. Educational services



CITY COUNCIL STAFF REPORT

MEETING DATE: *August 18, 2004*

Agenda Item # 26

PROTEST PRO-04-03: ANNEXATION ANX-03-01: HILL-GERA

Prepared By:

Planning Manager

Submitted By:

City Manager

RECOMMENDED ACTION(S):

1. Hold Protest Proceeding and Accept Written Protest from property owners.
2. Determine assessed value of protest and adopt Resolution.

EXECUTIVE SUMMARY: The applicant, Mr. George Gera, is requesting to annex five parcels, totaling approximately 19.50-acres, into the City of Morgan Hill. The site is located west of Hill Road, between Pear Drive and the southerly boundary of the El Dorado III subdivision. Inclusion of the parcels into the City limits would represent a logical adjustment of the boundary.

The annexation area consists of five parcels. Four of the parcels each contain approximately 2.5 acres, and the fifth parcel is nearly 10 acres in size. Pear Drive borders the 10-acre parcel to the south and Jean Court, a private drive, provides access to the four smaller parcels. The larger parcel and one of the smaller parcels maintain frontage on Hill Drive. Mr. Gera is the owner of the 10-acre parcel and is the applicant for the proposed annexation. A protest hearing has been scheduled because Mr. Gera was unable to obtain written consent of all owners within the proposed annexation area. In accordance with LAFCO policy, when an annexation is proposed not having 100 percent consent by all property owners, the City Council is required to hold a public hearing to initiate a "Protest Proceeding". At the regular meeting of July 21, 2004, the Council held the required public hearing, adopted a resolution to initiate the Protest Proceeding, and set the Proceeding for the August 18, 2004 meeting. The Council can accept the written protest at the August 18 hearing. If no protest is received, the proceeding can be terminated and the annexation allowed to proceed. If a written protest is filed, the City Council has up to 30 days to determine the assessed land values of both properties in the annexation. If the protest is submitted by a landowner owning 50 percent or more of the overall assessed land value, the annexation must be terminated. According to the County Assessors Records, the assessed land value of Mr. Gera's property is \$528,644 and assessed value of the four other properties combined is \$701,386. The applicant for the annexation (Gera) represents 42 percent of the assessed value. However, when the assessed value of one of the other properties that has provided written consent to the annexation is added, the assessed value to the two properties is \$846,906, or 68% of the assessed value of the annexation area. The City Council may therefore choose at this meeting to terminate the protest proceedings and allow the annexation to proceed by adoption of the attached Resolution.

FISCAL IMPACT: No budget adjustment required.

Attachments

1. Vicinity Map
2. Resolution

RESOLUTION NO. ____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL TERMINATING THE PROTEST PROCEEDINGS FOR APPLICATION PRO-04-03 REGARDING “HILL ROAD ANNEXATION NO. 2”, PROPERTY LOCATED ON THE WEST SIDE OF HILL ROAD AND NORTH SIDE OF PEAR DRIVE AND CONSISTING OF APPROXIMATELY 19.50 ACRES. (APNs 728-08-014 & 015 and 728-07-047, 048, 050 & 051)

WHEREAS, the City Council of the City of Morgan Hill has received a written request from the applicant of Annexation ANX-03-01 requesting that a Protest Proceeding be held to allow annexation into the City of Morgan Hill certain territory designated “Hill Road Annexation No. 2”, located in the County of Santa Clara, State of California, hereinafter more particularly described; and

WHEREAS, the property, consisting of approximately 19.5 acres on the west side of Hill Road north of Pear Drive (APNs 728-08-014 & 015 and 728-07-047, 048, 050 & 051), is contiguous to the City of Morgan Hill and is within the urban service area; and

WHEREAS, said territory is uninhabited and all owners of land included in the proposal have not consented to this annexation; and

WHEREAS, this Protest Proceeding is held in accordance with California Government Code Sections 57050-57052, 57075 and 57078 and with County of Santa Clara Local Agency Formation Commission guidelines for conducting Protest Proceedings.

NOW, THEREFORE, BE IT RESOLVED, that the City has determined from the County of Santa Clara Assessor’s records, that the assessed land value of the proposed annexation area is \$1,230,030 and the assessed value of two of the properties having provided written consent to the annexation is \$846,906, or 68 percent of the total land value of the annexation area; and,

THEREFORE, BE IT FURTHER RESOLVED, any protest submitted by a landowner would represent less than 50 percent of the overall assessed land value; and,

THEREFORE, BE IT FURTHER RESOLVED, that the City Council of the City of Morgan Hill hereby terminates Protest Proceeding for PRO-04-03 at a public hearing held on August 18, 2004;

PASSED AND ADOPTED at the regular meeting of the City Council of Morgan Hill held on this 18th day of August 2004 by the following vote.

PASSED AND ADOPTED by the City Council of Morgan Hill at a Regular Meeting held on the 18th Day of August, 2004 by the following vote.

AYES: **COUNCIL MEMBERS:**
NOES: **COUNCIL MEMBERS:**
ABSTAIN: **COUNCIL MEMBERS:**
ABSENT: **COUNCIL MEMBERS:**

☞ CERTIFICATION ☞

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Resolution No. , adopted by the City Council at a Regular Meeting held on August 18, 2004.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

IRMA TORREZ, City Clerk



CITY COUNCIL STAFF REPORT

MEETING DATE: March 3, 2004

DEVELOPMENT AGREEMENT AMENDMENT, DAA-03-12: PEET-LUPINE

RECOMMENDED ACTION(S):

1. Open/close Public Hearing
2. Waive the First and Second Reading of Ordinance
3. Introduce Ordinance

EXECUTIVE SUMMARY: The applicant is requesting approval to amend the development agreement for a single-family project to include 15 additional units. The 15 units are part of an overall 90-unit project referred to as Alicante Estates, located at the northeast corner of Cochrane Road and Peet Road in an R-1(12,000)/RPD Zoning District.

A development agreement for the first three phases of the project (38 Measure P units) has already been approved by the City. Earlier this year, the applicant was awarded 15 additional units under the supplemental allotment distribution. The applicant is requesting to amend the development agreement to include the 15 supplemental building allotments. The 15 allotments will be subject to compliance with the same Measure P commitments as the original 38 Measure P units.

Project development agreements are required as a formal contract between the developer and the City. The development agreement formalizes the commitments made during the Measure P process and establishes the development schedule for the project. The project specific commitments are identified in Paragraph 14 of the development agreement, and the development schedule is contained in Exhibit B.

On July 27, 2004, the Planning Commission recommended approval of the development agreement amendment by a vote of 5-0-1 (one Commissioner absent), with incorporation of modifications requested by the applicant. The applicant requested additional time to obtain building permits for the 22 FY 2004-05 units, and modifications to Paragraph 14(1)(i) regarding the timing of construction of the below market rate units. For the Council's reference, a copy of the July 27 Commission staff report and draft minutes is attached.

FISCAL IMPACT: None. Filing fees were paid to the City to cover the cost of processing these applications.

Agenda Item # 27

Prepared By:

Associate Planner

Approved By:

Planning Manager

Submitted By:

City Manager

ORDINANCE NO. , NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO ORDINANCE NO. 1660, NEW SERIES, AMENDING THE DEVELOPMENT AGREEMENT FOR APPLICATION MP-02-12: PEET – LUPINE INVESTORS/BORELLO (APNs 728-34-002 & -003) (DAA-03-12: PEET - LUPINE)

THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. The City Council has adopted Resolution No. 4028 establishing a procedure for processing Development Agreements for projects receiving allotments through the Residential Development Control System, Title 18, Chapter 18.78 of the Municipal Code.

SECTION 2. The California Government Code Sections 65864 thru 65869.5 authorizes the City of Morgan Hill to enter into binding Development Agreements with persons having legal or equitable interests in real property for the development of such property.

SECTION 3. The Planning Commission, pursuant to Title 18, Chapter 18.78.125 of the Municipal Code, Resolution Nos. 03-17a and 03-17b adopted May 27, 2003, and Resolution Nos. 04-35 and 04-36 adopted March 23, 2004, has awarded allotments to a certain project herein after described as follows:

<u>Project</u>	<u>Total Dwelling Units</u>
MP-02-12: Peet – Lupine Investors/Borello	22 units (Fiscal Year 2004-05)
	19 units (Fiscal Year 2005-06)
	12 units (Fiscal Year 2006-07)

SECTION 4. References are hereby made to certain Agreements on file in the office of the City Clerk of the City of Morgan Hill.

These documents to be signed by the City of Morgan Hill and the property owner set forth in detail and development schedule, the types of homes, and the specific restrictions on the development of the subject property. Said Agreement herein above referred to is amended by this ordinance and shall be binding on all future owners and developers as well as the present owners of the lands, and any substantial change can be made only after further public hearings before the Planning Commission and the City Council of this City.

SECTION 5. The City Council hereby finds that the development agreement amendment approved by this ordinance is compatible with the goals, objectives, policies, and land uses designated by the General Plan of the City of Morgan Hill.

SECTION 6. Authority is hereby granted for the City Manager to execute all development agreements approved by the City Council during the Public Hearing Process.

SECTION 7. Severability. If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

SECTION 8. Effective Date Publication. This ordinance shall take effect from and after thirty (30) days after the date of its adoption. The City Clerk is hereby directed to publish this ordinance pursuant to §36933 of the Government Code.

SECTION 9. MODIFICATION TO DEVELOPMENT SCHEDULE. The Council hereby approves an amendment to the development schedule for the Alicante Estates project, as attached in Exhibit A, and by this reference incorporated herein.

SECTION 10. MODIFICATION TO PARAGRAPH 8. The Council hereby approves an amendment to Paragraph 8 of the development agreement, as attached in Exhibit B, and by this reference incorporated herein.

SECTION 11. MODIFICATION TO PARAGRAPH 14(i)(iv). The Council hereby approves an amendment to Paragraph 14(i)(iv) of the development agreement, as attached in Exhibit C, and by this reference incorporated herein.

SECTION 12. MODIFICATION TO PARAGRAPH 14(l). The Council hereby approves an amendment to Paragraph 14(l) of the development agreement, as attached in Exhibit D, and by this reference incorporated herein.

SECTION 13. MODIFICATION TO PARAGRAPH 14(m)(ix). The Council hereby approves an amendment to Paragraph 14(m)(ix) of the development agreement, as attached in Exhibit E, and by this reference incorporated herein.

SECTION 14. MODIFICATION TO PARAGRAPH 14(p)(i). The Council hereby approves an amendment to Paragraph 14(p)(i) of the development agreement, as attached in Exhibit F, and by this reference incorporated herein.

SECTION 15. For the purposes of this development agreement amendment, all references to lot numbers and project phasing shall be as identified on the exhibit entitled, 'Alicante Estates Phases 1 through 3', date stamped July 27, 2004, and on file at the Community Development Department.

The foregoing ordinance was introduced at the regular meeting of the City Council of the City of Morgan Hill held on the 18th Day of August 2004, and was finally adopted at a regular meeting of said Council on the 1st Day of September 2004, and said ordinance was duly passed and adopted in accordance with law by the following vote:

AYES:	COUNCIL MEMBERS:
NOES:	COUNCIL MEMBERS:
ABSTAIN:	COUNCIL MEMBERS:
ABSENT:	COUNCIL MEMBERS:

ATTEST:

APPROVED:

Irma Torrez, City Clerk

Dennis Kennedy, Mayor

∞ CERTIFICATE OF THE CITY CLERK ∞

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. _____, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 1st Day of September 2004.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

IRMA TORREZ, City Clerk

EXHIBIT A

DEVELOPMENT SCHEDULE MP-02-12: PEET – LUPINE INVESTORS/BORELLO
FY 2004-05 (~~11~~ **22** units), FY 2005-06 (~~15~~ **19** units), FY 2006-07 (12 units)

- | | | |
|------|---|--|
| I. | SUBDIVISION AND ZONING APPLICATIONS
Applications Filed: | October 14, 2003 |
| II. | SITE REVIEW APPLICATION
Application Filed: | November 19, 2003 |
| III. | FINAL MAP SUBMITTAL
Map, Improvements Agreement and Bonds: | March 31, 2004 |
| IV. | BUILDING PERMIT SUBMITTAL
Submit plans to Building Division for plan check:
FY 2004-05 (11 22 units)
FY 2005-06 (15 19 units)
FY 2006-07 (12 units) | June 30, 2004
June 30, 2005
June 30, 2006 |
| V. | BUILDING PERMITS
Obtain Building Permits:
FY 2004-05 (11 12 units)
<i>(10 units)</i>
FY 2005-06 (15 19 units)
FY 2006-07 (12 units)

Commence Construction:
FY 2004-05 (11 22 units)
FY 2005-06 (15 19 units)
FY 2006-07 (12 units) | September November 30, 2004
<i>January 30, 2005</i>
September 30, 2005
September 30, 2006

June 30, 2005
June 30, 2006
June 30, 2007 |

Failure to obtain building permits and commence construction by the dates listed above, shall result in the loss of building allocations. Submitting a Final Map Application or a Building Permit six (6) or more months beyond the filing dates listed above shall result in the applicant being charged a processing fee equal to double the building permit plan check fee and/or double the map checking fee to recoup the additional costs incurred in processing the applications within the required time limits. Additionally, failure to meet the Final Map Submittal and Building Permit Submittal deadlines listed above may result in loss of building allocations. In such event, the property owner must re-apply under the development allotment process outlined in Section 18.78.090 of the Municipal Code if development is still desired.

An exception to the loss of allocation may be granted by the City Council if the cause for the lack of commencement was the City's failure to grant a building permit for the project due to an emergency situation as defined in Section 18.78.140 or extended delays in environmental reviews, permit delays not the result of developer inactions, or allocation appeals processing.

If a portion of the project has been completed (physical commencement on at least **19 27** dwelling units and lot improvements have been installed according to the plans and specifications), the property owner may submit an application for reallocation of allotments. Distribution of new building allocations for partially completed project shall be subject to the policies and procedures in place at the time the reallocation is requested.

EXHIBIT B

8. City's Approval Proceedings for Project. On May 27, 2003, the City of Morgan Hill approved a development plan for the real property as part of its Residential Control System Review. This approval is described in proceedings designated File No. MP-02-12: Peet – Lupine Investors/Borello, on file in the office of Community Development to which reference is made for further particulars. The development plan provides for the development of the property as follows:

Construction of ~~38~~ **53** single-family homes as approved by the City of Morgan Hill Planning Commission *as follows*:

<i>Phase 1</i>	<i>FY 2004-05</i>	<i>22 units (11 original, plus 11 supplemental)</i>
<i>Phase 2</i>	<i>FY 2005-06</i>	<i>19 units (15 original, plus 4 supplemental)</i>
<i>Phase 3</i>	<i>FY 2006-07</i>	<i>12 units</i>

9. Changes in Project.

(a) No substantial change, modification, revision or alteration may be made in the approved development plan without review and approval by those agencies of the City approving the plan in the first instance, which approval shall not be unreasonably withheld. No minor changes may be made in the approved development plan without review and approval by the Director of Community Development of the City, or similar representation if the Director is absent or the position is terminated, which approval shall not be unreasonably withheld.

(b) Any change specified herein and approved by this Development Agreement shall be deemed to be an allowable and approved modification to the Development Plan.

(c) In the event an application to change, modify, revise or alter, the development plan is presented to the Director of Community Development or applicable agencies of the City for review and approval, the schedule provided in Exhibit "B" shall be extended for a reasonable period of time as agreed to by the parties hereto to accommodate the review and approval process for such application.

(d) In the event the developer is unable to secure construction liability insurance because the project contains attached dwellings, the developer may convert the attached units into zero lot line or reduced setback detached units, subject to the review and approval of the Architectural Review Board. A zero lot line or reduced setback detached unit is defined as a dwelling physically separated from an adjacent dwelling on a separate lot of record but architecturally connected by a design element to give the appearance of attachment. In order to qualify for zero lot line or reduced setback detached units, evidence shall be provided to the City that the developer is unable to obtain construction liability insurance due specifically to the attached dwellings. This provision is contingent upon City Council approval of amendments to Title 18 of the Morgan Hill Municipal Code (the Zoning Code) to allow zero lot line or reduced setback detached units.

10. Time for Construction and Completion of Project.

(a) Securing Building Permits and Beginning Construction. Unless excused from performance as provided in paragraph 27 hereof, Property Owner agrees to secure building permits by (see Exhibit "B") and to begin construction of the Project in accordance with the time requirements set forth in the Uniform Building Code and the City's Residential Development Control System (see Exhibit "B") as these exist on the date of execution of this Agreement. In the event Property Owner fails to comply with the above permit issuance and beginning construction dates, and satisfactory progress towards completion of the project in accordance

EXHIBIT C

Architectural, Landscape and Grading Plans as approved by the City of Morgan Hill Planning Commission and Site and Architectural Review Process.

(f) All architectural features and materials for all structures shall be constructed as shown on the Architectural plans as approved by the Site and Architectural Review Process.

(g) Property Owner agrees to any other reasonable condition of approval resulting from subdivision, site review and environmental review, which conditions are on file with the City.

(h) Property Owner agrees to include the following **safety** features in the development:

- (i) Fire escape ladders for all upper floor bedrooms
- (ii) One mounted fire extinguisher (rated 2A10BC) for the first 1,500 sf of floor space, plus one mounted fire extinguisher (rated 2A10BC) for each additional 1,500 sf of floor space
- (iii) Outdoor lighting to meet all police department specifications
- (iv) Illuminated address numbers for each unit and painted curb numbers where possible
- (v) Noncombustible siding materials on at least 50 percent of units, and on at least 50 percent on an individual unit
- (vi) Intrusion and fire alarm system monitored by a central station and which meets City ordinance
- (vii) Automatic earthquake shut-off valves for gas service

(i) Property Owner agrees to include the following **open space and landscape** improvements in the development:

- (i) Private open space areas will be maintained by a homeowners' association
- (ii) Continuous open space buffer 10 ft in excess of minimum requirement along Peet Rd frontage
- (iii) Interior paths to the future four-acre public park
- (iv) A minimum of 3.95 acres of private common open space within the project interior, of which at least one acre will be provided in Phase 2 of the project ***and at least one acre in Phase 3***
- (v) Landscape island and entry statement at Peet Road entrance
- (vi) One, 24-inch box size tree for each ten site trees; trees shall be from city approved list, with a minimum height of nine feet and spread of three to four feet
- (vii) Varied front yard landscaping installed by developer
- (viii) Deciduous trees planted along south facing side of homes
- (ix) 24-inch box street trees from city approved list, two per lot, three per corner lot
- (x) Drought tolerant grasses for lawn areas; no more than 25 percent of landscape area to be covered with lawn (calculation exclusive of park landscape area)
- (xi) Water conserving, automatic irrigation system with minimum three separate valves and circuits for trees; shrubs and groundcover; and lawn areas.
- (xii) Non-irrigated hardscape on at least 15 percent of landscape area (pedestrian walkways across circulation aisles not included)
- (xiii) Minimum 50 percent of all plant material will be water conserving

EXHIBIT D (page 1 of 2)

plant material from the Selected Plan List, Appendix A of the City Water Conservation Landscape Guide

- (xiv) Landscaping will be installed in all areas visible from public and private rights-of-way
- (xv) Existing trees located along the project frontages that are not located in the public right-of-way or diseased will be saved
- (xvi) Provide funds to preserve riparian habitat along Coyote Creek in an amount at least equal to \$1,000 per unit per point
- (xvii) Precast masonry sound walls shall be constructed along the Cochrane Road and Peet Road frontages to ensure exterior (rear yard) noise levels do not exceed 60 dBA L_{dn} and indoor noise levels do not exceed an L_{dn} of 45 dBA. The wall shall be designed to minimize its size along the project frontages (e.g., stepped down to 3 ft. in height or replaced with wrought iron fencing adjacent the front yards and cul-de-sac bulbs) as approved by the Architectural Review Board.
- (xviii) Enhanced landscaping shall be provided along the Cochrane Road frontage, particularly in front of the cul-de-sac bulbs, to minimize light impacts on existing residences on the north side of Cochrane Road and to maintain a rural appearance.

(j) Property Owner agrees to pay the district-adopted developer fees as provided by the Leroy F. Greene School Facilities Act of 1998.

(k) Property Owner agrees to purchase one (1) transferable development credit (TDC) for every 25 dwelling units, subject to this development potential transfer mechanism. Based on 38 allotments, the purchase of 1.52 TDCs is required. One full TDC shall be purchased prior to the issuance of a building permit for the first unit in Phase 2, with the remaining fraction of 0.52 TDC due prior to the issuance of a building permit for the first unit in Phase 3. Payment of the 0.52 TDC shall be provided in the form of an in-lieu open space fee in an amount satisfactory to the City Council. Should purchase of the one, full TDC prove infeasible, Property Owner may, at City's option, pay an in-lieu open space fee for the entire 1.52 TDC in an amount satisfactory to the City Council. Payment of the 1.52 TDC shall be collected on a per unit basis at time of building permit issuance. Building permits will not be granted unless this provision has been complied with to the satisfaction of the City Council.

(l) Property Owner agrees to include the following **affordable housing** features in the development:

- (i) The Property Owner shall provide units for participation in a Below Market Rate (BMR) low income, for sale program approved by the Community Development Department as follows: ~~one (1)~~ **three (3)** in Phase 1, ~~two (2)~~ **one (1)** in Phase 2, and ~~one (1)~~ **two (2)** in Phase 3. The BMR unit(s) shall be approved by the City of Morgan Hill Planning Commission and Site and Architectural Review process. For Phase 1, ~~the a~~ BMR shall pass framing inspection prior to the framing inspection of the ~~seventh (7th)~~ **10th, 20th and 24th** Measure P building permit. The ~~two single~~ Phase 2 BMR units shall pass framing inspection prior to the framing inspection of the ~~22nd~~ **33rd** Measure P building permit. The Phase 3 BMR units shall pass framing inspection prior to the framing inspection of the ~~33rd~~ **50th and 55th** Measure P building permit.
- (ii) The BMR units shall be located and designed as follows:
 - Phase 1: Lot 11, **Lot 16, and Lot 21**, **each** 4 bedrooms, three full bathrooms, 2-car garage, 1,498 sf

EXHIBIT D (page 2 of 2)

- Phase 2: ~~Lots 2 and 11~~ **Lot 14**, ~~each~~ 4 bedrooms, three full bathrooms, 2-car garage, 1,498 sf
 - Phase 3: ~~Lot 8~~ **Lot 1 and Lot 10**, ~~each~~ 4 bedrooms, three full bathrooms, 2-car garage, 1,498 sf
 - (iii) Below Market Rate (BMR) purchasers shall be treated in the same manner as purchasers of non-BMR units. Developer, including Developer's company, employees, and/or agents agrees to assist BMR purchasers with all phases of the sales transaction, including, but not limited to, the preparation of any and all documents necessary to complete the sale and representation by a licensed real estate agent/broker.
 - (iv) Minimum standards for equipment, fixtures, appliances and finishes. All items installed shall be of good quality. Good quality shall be deemed as entry level but generally not the lowest level of product offered for that application. It shall offer durability, reliability and maintain a quality appearance and function that is standard to most other median priced homes in the area. The listed items must be installed as a basic feature of each BMR home.
 - Door hardware to be brass finish
 - Interior doors to be raised panel type or same as market rate
 - All closets shall have doors
 - Appliances shall be major brand name
 - Microwave hood shall be installed over stove
 - Kitchen counters shall be white ceramic tile
 - Kitchen cabinets shall be stained wood with white melamine interiors
 - Units will be roughed in for AC including electrical and line set.
 - Basic alarm system to secure all openings to the home
 - Carpet in bedrooms, hallways, family rooms
 - Linoleum or tile in entry, bathrooms, kitchens
 - Laminate flooring may be substituted for carpet or linoleum
 - Electric garage door opener
 - (v) In addition to the BMR commitment, the project shall include 10 percent attached, moderate rate units (minimum ~~four~~ **six** units). The moderate units shall be located and designed as follows:
 - Phase 1: Lot 12, **Lot 17, and Lot 22**, ~~each~~ 3 bedrooms plus optional 4th bedroom or den, 3 full bathrooms, 2-car garage, 2,210 sf
 - Phase 2: ~~Lots 1 and 12~~ **Lot 13**, ~~each~~ 3 bedrooms plus optional 4th bedroom or den, 3 full bathrooms, 2-car garage, 2,210 sf
 - Phase 3: ~~Lot 7~~ **Lot 2 and Lot 11**, ~~each~~ 3 bedrooms plus optional 4th bedroom or den, 3 full bathrooms, 2-car garage, 2,210 sf
 - (vi) The final sales price (at close of escrow) for the ~~four~~ **six** moderate rate units shall be based on HUD income limits for a family of 4 at the closing date.
- (m) Property Owner agrees to include the following **construction** features in the development:

EXHIBIT E

- (ix) ~~Two Six~~ modified setback dwellings are allowed in Phase 1 of the project, and ~~four two~~ modified setback dwellings are allowed in Phase 2 if building permits are obtained by June 30, 2005. An additional ~~two four~~ modified setback dwellings are allowed in Phase 3, subject to the extension of Ordinance No. 1641. In the event the City Council does not extend Ordinance No. 1641, the ~~two four~~ modified setback dwellings proposed in Phase 3 shall be constructed as physically attached units.
- (n) The Property Owner agrees to provide the following **circulation** improvements:
- (i) Install a paved walkway to Live Oak High School as part of a joint commitment with the Mission Ranch and Coyote Estates projects
- (ii) Install off-site pedestrian safety improvements within $\frac{3}{4}$ mile of the project as designated and/or approved by the MHUSD at a cost of at least \$3,000 per allocated unit
- (iii) Obtain dedication and construct off-site improvements for Cochrane Road along the Ryan property frontage (APN 728-34-004) from the northern edge of the project to St. Marks, at a minimum cost of \$156,000. Improvements shall be provided as follows: Phase 1 – Dedication; Phase 2 – Design; and Phase 3 – Construction. Applicant shall receive credit for excess improvement costs in the next or future phase of the development in accordance with the terms approved by the Public Works Director.
- (iv) Completes full street improvements along Peet Road.
- (v) A street connection to Cochrane Road shall be provided with full street improvements (curb, gutter and sidewalk), as identified on the precise development plan. At the time the adjacent parcel to the north (radio station site) is developed, or the project extension of St. Katherine Drive to St. Marks Avenue is completed, the City shall re-evaluate the need for the Cochrane Road connection. If it is determined that the connection is no longer needed, the following conditions shall apply:
1. The project developer shall be responsible for the closure of the connection and redesign of the subject roadway.
 2. The paved area between Cochrane Road and the end of the subject street shall be replaced with landscaping and an irrigation system by the project developer. Landscaping shall be consistent with the Landscape Plan approved by the Architectural Review Board.
 3. The Alicante Estates Homeowner's Association (HOA) shall accept and maintain the additional landscape area as part of the project common areas. The Alicante Estates CC&Rs shall include language requiring compliance with this condition.
 4. Prior to Final Map Approval, the design of the roadway shall be reviewed and approved by the Public Works Department. If required by the Public Works Department, the developer shall offer the necessary right-of-way dedication for the cul-de-sac bulb for future closure of the roadway.

EXHIBIT F

(o) The Property Owner agrees to provide the following **Storm Drain** improvements:

- (i) City maintained storm lines will be constructed within paved areas of the streets
- (ii) Applicant will contribute \$1,000 per unit to the off-site storm drain improvement fund
- (iii) Applicant will contribute \$1,000 per unit to the Capital Improvements Program Fund

(p) The Property Owner agrees to provide the following **park and recreation** improvements:

- (i) On-site recreational amenities will be provided ~~as part of~~ ***as follows: Phase 2 - of the project, including*** one passive recreation area, one tot lot (***minimum three activities***), one volleyball court, and a picnic/barbeque area; ***Phase 3 - one passive recreation area and one play area with apparatus for different age group (min. three activities)***. Future phases of the project shall include the following: one passive recreation area, ~~two~~ ***one*** tot lots, one, ½ basketball court, and picnic/barbeque areas.
- (ii) Applicant will provide bikeway improvements consistent with the Bikeways Master Plan along Cochrane Road project frontage
- (iii) Applicant will contribute to the creation of a neighborhood park through cooperation with the MHUSD for a new public 4-acre park combined with a connecting school
- (iv) Project will provide park area in excess of 50 percent of code requirement
- (iv) Meandering 7-ft paths along Peet and Cochrane Roads will be installed to provide access to the Coyote Creek County Park
- (v) The project will provide a meandering 7-ft to 8-ft path along Cochrane Road to the east, plus a similar walk along the Cochrane frontage of the Ryan parcel (APN 728-34-004) up to St. Marks, and a cross walk to the County Park entrance across the street
- (vi) As part of Phase 2, a path shall be provided adjacent to Lot 9, connecting the cul-de-sac bulb to the common area park.

(q) Water mains either new or existing shall be gridded between Peet Road and St. Marks, and to Cochrane Road.

(r) The Property Owner shall record constructive notice on the Final Parcel Map for the development that each lot is subject to the requirements of this Development Agreement, and that commitments under the Agreement which the City has permitted the Property Owner to delay must be fulfilled by the next subsequent property owners.

(s) The project shall provide the following information, by address for each unit, to the Community Development Department:

- (i) Date of sale
- (ii) The number of bedrooms
- (iii) The final sales price

This information shall be reported on an annual basis for the calendar year and is due to the City by March 30 of the following year for every year until the project is completed and all units are sold.



CITY COUNCIL STAFF REPORT

MEETING DATE: *August 18, 2004*

DEVELOPMENT AGREEMENT AMENDMENT APPLICATION DA 03-13: MISSION VIEW DR.-MISSION RANCH

RECOMMENDED ACTION(S):

Open/close Public Hearing
Waive the First and Second Reading of Ordinance
Introduce Ordinance

EXECUTIVE SUMMARY:

A request to amend a previously approved development agreement for the Phases 7, 8 & 9 of the Mission Ranch project located on the southeast corner of the intersection of Cochrane Rd. and Mission View Dr. The proposed amendment would incorporate 22 supplemental building allocations. The subdivision map for the 22 additional lots is also included within this same agenda as a consent calendar item.

In January 2004, the Mission Ranch project received tentative map approval for Phases 7, 8 & 9 (38 lots) which consisted of 11 units in FY 2004-05, 15 units in FY 2005-06 and 12 units in FY 2006-07. As a result of the passage of Measure C, the project received 10 supplemental allotments for FY 2004-05 and 12 supplemental allotments for FY 2005-06 (22 total).

The 22 supplemental allocations received in March 2004, are currently not accounted for within the project's development agreement approved in January 2004. The proposed development agreement amendment would incorporate the additional allotments into the project development agreement. The amended development agreement is attached to the Council ordinance as Exhibit A. The amendments to the agreement are shown in strike out for deleted text and bold text for language added.

The proposed development agreement amendments were reviewed by the Planning Commission at their July 27 meeting, at which time the Commission voted 6-0 (Weston absent) to recommend approval of the proposed development agreement as prepared. The Planning Commission staff report and minutes are attached for Council's reference.

FISCAL IMPACT: No budget adjustment required

Agenda Item #28

Prepared By:

Senior Planner

Approved By:

Planning Manager

Submitted By:

City Manager

ORDINANCE NO. ____, NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO ORDINANCE NO. 1658, NEW SERIES, TO AMEND DEVELOPMENT AGREEMENT DA-03-13 FOR APPLICATION MP 02-15: MISSION VIEW-MISSION RANCH TO ALLOW FOR THE INCORPORATION OF 22 SUPPLEMENTAL BUILDING ALLOCATIONS AWARDED IN THE 2003 RDCS COMPETITION. (APN 728-32-008 & 009)

THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. The City Council has adopted Resolution No. 4028 establishing a procedure for processing Development Agreements for projects receiving allotments through the Residential Development Control System, Title 18, Chapter 18.78 of the Municipal Code.

SECTION 2. The California Government Code Sections 65864 thru 65869.5 authorizes the City of Morgan Hill to enter into binding Development Agreements with persons having legal or equitable interests in real property for the development of such property.

SECTION 3. The Planning Commission, pursuant to Title 18, Chapter 18.78.125 of the Municipal Code and Resolution Nos. 04-35 & 04-36, both adopted March 23, 2004, has awarded allotments to a certain project herein after described as follows:

<u>Project</u>	<u>Total Dwelling Units</u>
MP-02-15: Mission View – Mission Ranch	10 additional allotment for FY 2004-05 and 12 allotments for FY 2005-06

SECTION 4. The City Council hereby finds that the development agreement amendment approved by this ordinance is compatible with the goals, objectives, policies, and land uses designated by the General Plan of the City of Morgan Hill.

SECTION 5. The City Council hereby finds that the development agreement amendment is necessary to incorporate the 22 supplemental building allocations awarded to the project after the adoption of the original development agreement under ordinance 1658.

SECTION 6. Severability. If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

SECTION 7. Effective Date Publication. This ordinance shall take effect from and after thirty (30) days after the date of its adoption. The City Clerk is hereby directed to publish this ordinance pursuant to §36933 of the Government Code.

SECTION 8. References are hereby made to certain Agreements on file in the office of the City Clerk of the City of Morgan Hill. These documents to be signed by the City of Morgan Hill and the property owner set forth in detail and development schedule, the types of homes, and the specific restrictions on the development of the subject property. Said Agreement herein above

referred to shall be binding on all future owners and developers as well as the present owners of the lands, and any substantial change can be made only after further public hearings before the Planning Commission and the City Council of this City. The amended agreement shall replace the development agreement approved under Ordinance No 1658.

The foregoing ordinance was introduced at the regular meeting of the City Council of the City of Morgan Hill held on the 18th Day of August 2004, and was finally adopted at a regular meeting of said Council on the 1st Day of September 2004, and said ordinance was duly passed and adopted in accordance with law by the following vote:

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:

ATTEST:

APPROVED:

Irma Torrez, City Clerk

Dennis Kennedy, Mayor

∞ CERTIFICATE OF THE CITY CLERK ∞

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. _____, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 1st Day of September 2004.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

IRMA TORREZ, City Clerk



CITY COUNCIL STAFF REPORT

MEETING DATE: August 18, 2004

ZONING AMENDMENT APPLICATION ZA 04-04: City of Morgan Hill-Central Commercial Residential Zoning.

RECOMMENDED ACTION(S):

1. Open/close Public Hearing
2. Waive the First and Second Reading of Ordinance
3. Introduce Ordinance

EXECUTIVE SUMMARY: A request to amend the zoning text for the Central Commercial Residential CC-R, zoning district, Chapter 18.24 of the Morgan Hill Municipal Code to implement land use strategies contained in the updated Downtown Plan.

Prior to the completion of the environmental documentation for the Downtown Plan, the City Council asked staff to move forward with implementation of the portions of the plan which do not require CEQA review.

One of the goals of the Downtown plan is to develop a downtown that has a desirable, pedestrian safe environment for residents and visitors. One of the strategies discussed in the Downtown plan is the limitation of uses within specific areas within the downtown. Specifically ground floor uses for buildings facing onto Monterey Rd. To create a continual visual interest for the pedestrians and to create a more stimulating environment, the plan recommends restricting office uses to second story locations along Monterey Rd. and Third St. The plan also recommends that the CC-R zoning standards be reviewed to eliminate any impediments to business locating within the Downtown area.

To implement the strategies of the Downtown plan, it was necessary to reformat the CC-R zoning text to distinguish uses which are permitted and conditional along Monterey Rd. and permitted and conditional uses allowed in other areas of the CC-R zoning district. The reformatted lists of permitted and conditional uses are shown in Sections 18.24.020 through 18.24.041 within the revised CC-R text.

The overall list of permitted and conditional uses is primarily the same as the current zoning text. Small wording changes have been made so the list of uses will be consistent with the existing or pending zoning definitions. Other major text changes included within this proposal are the elimination of mixed uses as a conditional use and the allowance of bars, theaters and nightclubs as permitted uses along Monterey Rd.

A revised version of the CC-R zoning text (Municipal Code Chapter 18.24) is attached to the Council ordinance at Exhibit A. Also attached is a map defining the CC-R district and illustrating the areas along Monterey Rd. and Third which are proposed to have a different list of permitted uses.

The Planning Commission reviewed the proposed text amendments at their July 27 and August 10 meetings. A copy of the Commission's staff report and minutes are attached for the Council's reference.

FISCAL IMPACT: No budget adjustment required.

Agenda Item # 29

Prepared By:

Senior Planner

Approved By:

Planning Manager

Submitted By:

City Manager

ORDINANCE NO. , NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING TEXT AMENDMENTS TO CHAPTER 18.24 (CENTRAL COMMERCIAL/ RESIDENTIAL DISTRICT) OF TITLE 18 (ZONING) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL. (ZA-04-04: CITY OF MORGAN HILL-TEXT AMENDMENT/CC-R)

THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY ORDAINS AS FOLLOWS:

SECTION 1. The proposed zoning amendment is consistent with the Zoning Ordinance and the General Plan.

SECTION 2. The zone change is required in order to serve the public convenience, necessity and general welfare as provided in Section 18.62.050 of the Municipal Code.

SECTION 3. INCORPORATING ZONING TEXT CHANGES BY REFERENCE. There hereby is attached hereto and made a part of this ordinance, a text amendment to the Planning and Land Use Code, Title 18 of the Morgan Hill Municipal Code, entitled "Central Commercial/Residential Zoning Text Amendment" as contained in the attached Exhibit "A."

SECTION 4. Severability. If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

SECTION 5. Effective Date Publication. This ordinance shall take effect from and after thirty (30) days after the date of its adoption. The City Clerk is hereby directed to publish this ordinance pursuant to §36933 of the Government Code.

The foregoing ordinance was introduced at the regular meeting of the City Council of the City of Morgan Hill held on the 18th Day of August 2004, and was finally adopted at a regular meeting of said Council on the 1st Day of September 2004, and said ordinance was duly passed and adopted in accordance with law by the following vote:

AYES:	COUNCIL MEMBERS:
NOES:	COUNCIL MEMBERS:
ABSTAIN:	COUNCIL MEMBERS:
ABSENT:	COUNCIL MEMBERS:

ATTEST:

APPROVED:

Irma Torrez, City Clerk

Dennis Kennedy, Mayor

⌘ CERTIFICATE OF THE CITY CLERK ⌘

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. , New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 1st Day of September 2004.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

IRMA TORREZ, City Clerk

EXHIBIT A

Chapter 18.24

CC-R CENTRAL COMMERCIAL/RESIDENTIAL DISTRICT

Sections:

- 18.24.010 Purpose of district.
- 18.24.020 Permitted uses for first floor locations for parcels fronting on Monterey Road or Third Street.
- 18.24.030 Conditional uses for first floor locations on parcels fronting on Monterey Road or Third St.
- 18.24.040 Permitted uses for second story or above locations for parcels fronting on Monterey Road or Third Street.
- 18.24.050 Conditional uses for second story or above location for parcels fronting on Monterey Road or Third Street.
- 18.24.060 Permitted uses for parcels not fronting on Monterey Road or Third Street.
- 18.24.070 Conditional uses for all areas not fronting on Monterey Road or Third Street.
- 18.24.080 Residential Development restrictions within the CC-R district.
- 18.24.090 Accessory uses.
- 18.24.100 Site development standards.
- 18.24.110 Commercial uses--Performance standards.
- 18.24.120 Other required conditions.

18.24.010 Purpose of district.

The purposes of this CC-R central commercial/residential mixed-use district are to:

- A. Implement the goals and objectives of the Downtown Design Plan as recommended by the City Council in 2003 and as amended from time to time.
- B. Preserve older architectural styles in the city;
- C. Provide for a variety and intermixture of residential and commercial activities in the downtown area; and
- D. Conserve housing stock. (Ord. 559 N.S. § A (part), 1981)

18.24.020 Permitted uses for first floor locations for parcels fronting on Monterey Road or Third Street.

The following uses shall be permitted in the CC-R district for first floor locations for parcels fronting on Monterey Rd. or Third St.:

- A. Retail Stores;
- B. Restaurants;

- C. Financial Services;
- D. Nightclubs, theaters and bars;
- E. Commercial indoor recreation uses 3,000 sq. ft. or less in area.
- F. Schools located between E. Dunne Ave. and E. Fifth St.

18.24.030 Conditional uses for first floor locations on parcels fronting on Monterey Road or Third St.

The following uses may be conditionally allowed in the CC-R district on first floor locations on parcels fronting on Monterey Rd. or Third St., subject to issuance of a conditional use permit in accordance with Chapter 18.54 of this title and finding of consistency with the Downtown plan:

- A. Commercial office uses;
- B. Residential units;
- C. Convenience Markets/Stores;
- D. Drive-in Establishments;
- E. Commercial Indoor Recreation.

18.24.040 Permitted uses for second story or above locations for parcels fronting on Monterey Road or Third Street.

The following uses in the CC-R district shall be permitted only in second story (or above) locations for parcels fronting on Monterey Rd. or Third St.:

- A. Single-family attached, duplex and multifamily dwellings (see development restriction in section 18.24.070);
- B. Personal Services;
- C. Professional Offices;
- D. Medical Offices
- E. Small Family Day Care.
- F. All permitted uses listed in Section 18.24.020.

18.24.050 Conditional uses for second story or above location for parcels fronting on Monterey Road or Third Street.

The following uses in the CC-R district shall be conditional in second story (or above) locations for parcels fronting on Monterey Rd. or Third St. subject to issuance of a conditional use permit in accordance with Chapter 18.54 of this title and finding of consistency with the Downtown plan:

- A. Schools
- B Convenience Markets/Stores;

- C. Commercial Indoor Recreation.

18.24.060 Permitted uses for parcels not fronting on Monterey Road or Third Street.

The following uses shall be permitted in the CC-R district for parcels not fronting on Monterey Rd. or Third St.:

- A. Single-family attached, detached, duplex and multifamily dwellings (see development restriction in section 18.24.080);
- B. Retail (excepting locations west of the parcels fronting the west side on Monterey Rd.);
- C. Restaurants;
- D. Personal Services;
- E. Medical Offices;
- F. Professional Offices;
- G. Financial Services;
- H. Small Family Day Care.

18.24.070 Conditional uses for all areas not fronting on Monterey Road or Third Street.

The following uses may be conditionally allowed in all areas not fronting on Monterey Rd. or Third St., subject to issuance of a conditional use permit in accordance with Chapter 18.54 of this title and finding of consistency with the Downtown plan:

- A. Convenience Markets/Stores;
- B. Drive-in Establishments;
- C. Nursery School/Large Family Day Care facility; except on Monterey Rd.
- D. Commercial Indoor Recreation.

18.24.080 Residential Development restrictions within the CC-R district:

Single-family attached, duplex and multifamily dwellings in the CC-R district are subject to the following restrictions:

- A. Residential development control system approval is required for all residential development in accordance with Chapter 18.78 of this title.
- B. Residential development is allowed at a density of one dwelling per two thousand four hundred square feet or greater.
- C. Only one detached dwelling per parcel.
- D. A Residential Planned Development zoning designation is required for development of more than one contiguous parcel proposed by the same individual or entity.

- E. Residential units on parcels fronting Monterey Rd., are permitted only on second story and above locations.
- F. No new residential units shall be allowed in the area bounded by Second Street, Depot Street, Fourth Street and Monterey Road, except as part of mixed use projects.

18.24.090 Accessory uses.

The following accessory uses are permitted in the CC-R district:

- A. All uses customarily appurtenant to a permitted residential use. (Ord. 559 § A (part), 1981)

18.24.100 Site development standards.

The following site development standards shall apply in the CC-R district:

- A. Minimum lot area, six thousand square feet;
- B. Minimum lot width, fifty feet. Minimum lot width for two or more dwellings shall be sixty feet;
- C. Minimum lot depth, one hundred feet;
- D. Maximum building coverage, seventy-five percent;
- E. Minimum setbacks, commercial and mixed use development:
 - 1. Front, zero feet,
 - 2. Rear, zero feet,
 - 3. Side, zero feet;

Unless adjacent to a residential use, in which case the setback shall be a minimum of twenty-five feet or a distance deemed appropriate by the Architectural and Site Review Board after reviewing specific site planning and architectural considerations;

- F. Minimum setbacks, residential:
 - 1. Front, twenty-five feet,
 - 2. Rear, twenty feet,
 - 3. Side, five feet;

Unless part of a planned development, in which case setbacks may vary in accordance with the approved design layout;

- G. Maximum height three stories; thirty-five feet; or 45 ft. with a minimum of 10 ft. devoted to a roof element on a three story structure.
- H. Side street side yard for residential development. A side yard along the side street lot line of a corner lot shall have a width of not less than fifteen feet or one-half the required depth of the front yard, whichever is greater;
- I. Cul-de-sac lot width, minimum of forty feet as measured along the front property

line.

18.24.110 Commercial uses--Performance standards.

In order to achieve residential compatibility with existing dwellings in the CC-R zoning district, the following standards shall apply to proposed commercial uses when they abut residential property:

- A. A trip generation figure of not more than ten trips per one hundred square feet of floor area must be characteristic of the proposed use.
- B. Landscaping, including vegetative screening of the use from adjacent residential structures, shall account for a minimum of ten percent of the lot area.
- C. Noise levels emanating from the commercial enterprise may not exceed sixty dBA at the property perimeter.
- D. Commercial structures must be designed to include a transition in height and mass when constructed adjacent to an existing residential unit
- E. Hours of business operation must be compatible with a residential environment. Should a commercial use be active during the evening hours, noise levels shall not exceed forty-five dBA, as measured at the property boundary.
- F. All proposed commercial use conversion or commercial building expansion shall be subject to site and architectural plan approval by the Architectural and Site Review Board. Minimum front yard setback standards shall be increased by up to twenty-five feet if it is found necessary to maintain the residential character of the neighborhood in which the use conversion or building expansion is proposed.
(Ord 1111 § 15, 1992; Ord. 559 N.S. § A (part), 1981)

18.24.120 Other required conditions.

- A. Architectural and site plan approval by the Architectural and Site Review Board shall be required for construction of any residential dwelling which would result in the establishment of two or more dwellings on any parcel with a street frontage less than sixty feet or an area less than six thousand square feet.
- B. All new residential construction shall conform with provisions of the housing replacement program as set out in Chapter 15.30 of this title.
(Ord. 1111 N.S. § 16, 1992; Ord. 1055 N.S. § C (part), 1991; Ord. 899 N.S. § 29, 1989; Ord. 783 N.S. § 3 (part), 1986)



CITY COUNCIL STAFF REPORT

MEETING DATE: August 18, 2004

Agenda Item # 30

Prepared By:

Finance Director

Submitted By:

City Manager

LIBRARY DEVELOPMENT IMPACT FEE ADJUSTMENTS

RECOMMENDED ACTIONS:

- 1). Open and close Public Hearing
- 2). Adopt the Resolution

EXECUTIVE SUMMARY: On August 21, 2002, the City Council approved various changes to the City's development impact fees, based upon studies conducted by the City's consultant, staff analysis, and public input. The consultant reviewed the various master plans available to the City and determined the appropriate fee, based upon demand data, necessary to recover the full cost of specific capital improvements for each fee, to the extent that these projects would benefit new development. At that time, the City Council did not update the Library impact fee, but instead decided to keep the existing Library fee in place until the outcome of the City's Proposition 14 library grant application was known. Facility needs, costs, and available revenues were incapable of calculation until we ascertained whether grant monies would be available. Now that it appears that State funding will not be forthcoming, it is appropriate to proceed with an increase in the impact fees.

The supporting documentation and methodology for the proposed adjustments to the Library development impact fee is attached as Attachment B. The methodology is based upon the basic methodology provided in the May 9, 2002, Development Impact Fee Study authored by DMG MAXIMUS, and represents staff's additional analysis.

The fee would be charged only on residential development and would provide \$750 from each new single family home and \$614 from each new multi-family home, as reflected on Exhibit A. This fee would be fully implemented on October 18, 2004, as proposed.

The entire Civic Center site library project is estimated to cost \$14.7 million in construction costs and \$1.7 million in land costs, for a total of \$16.4 million. These costs would be financed as follows:

Redevelopment Agency tax increment:	\$ 9,796,700
Library JPA capital contributions on hand:	148,300
Present value of future JPA capital contributions:	1,000,000
Development impact fees on hand:	485,000
Present value of increased impact fees:	<u>4,970,000</u>
Total Civic Center site library project financing:	<u>\$16,400,000</u>

FISCAL IMPACT: The proposed Library development impact fee increases would allow the City to fully recover the cost of new facilities from new development to the extent that new development benefits from Library improvements.

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL ADOPTING INCREASED LIBRARY DEVELOPMENT IMPACT FEES

WHEREAS, new development within the City of Morgan Hill will result in additional population and business growth, and such growth will place additional burdens on various city facilities, infrastructure and services, requiring construction of expanded and/or new city facilities and services; and,

WHEREAS, all development within the City of Morgan Hill should bear a proportionate financial burden in the construction and improvement of public facilities and services which are necessary to serve the growth engendered by such development; and,

WHEREAS, the imposition of development impact fees is the preferred method of ensuring that new development bears its proportionate share of the cost of public facilities and service improvements; and,

WHEREAS, imposition of impact fees to finance public facilities and service improvements required by new development is necessary in order to avoid adversely impacting existing facilities and services; and,

WHEREAS, consistent with these principles, Chapter 3.56 of the Municipal Code of the City of Morgan Hill establishes Development Impact Mitigation Fees; and,

WHEREAS, Section 3.56.060 of the Municipal Code of the City of Morgan Hill provides for revision of established fees, including increases, by resolution; and,

WHEREAS, Resolution 5592, as adopted by the City Council, has set various fee rates for development impact fees; and,

WHEREAS, the City Council of the City of Morgan Hill has received and duly considered the reports entitled "Development Impact Fee Study," dated May 9, 2002, authored by DMG Maximus, and additional analysis conducted by City of Morgan Hill staff, and presented to the City Council on July 21, 2004, and August 18, 2004; and,

WHEREAS, the DMG Maximus and City staff analysis analyzed the City's existing land use patterns and zoning, and the goals and objectives of the City's general plan; and,

WHEREAS, the DMG Maximus report and City staff analysis determined the public facilities and service improvements engendered by anticipated future development in light of the General Plan and existing and projected land use patterns and zoning; and,

WHEREAS, as the DMG Maximus report and City staff analysis demonstrate, the development impact fees established by this resolution are based upon estimated costs for new public facilities and service improvements, which will be required, incrementally, by new development within the City; and,

WHEREAS, as the DMG Maximus report and City staff analysis demonstrate, the development impact fees established by this resolution do not exceed the reasonable cost of providing public facilities and service improvements occasioned by development projects within the City; and,

WHEREAS, the fees established by the DMG Maximus report and staff analysis rationally relate to the reasonable cost of providing public facilities occasioned by the development projects and service improvements within the City; and,

WHEREAS, a public hearing on adoption of this resolution and the fees outlined in Exhibit A attached hereto was noticed pursuant to and in compliance with Government Code section 6062(a), and set as part of a regular City Council meeting held on August 18, 2004, in the Council chambers located at City Hall, 17555 Peak Avenue; and,

WHEREAS, the DMG Maximus report and City staff analysis, as well as all material supplementary thereto, and all background data referenced in the reports, were available for public inspection and review in the office of the Finance Department of the City of Morgan Hill; and,

WHEREAS, the City Council has received and duly considered all written and verbal comments provided to it by staff and the public, which comments are hereby incorporated into the record on this matter; and,

WHEREAS, the City Council deems it necessary that development impact fees be adjusted to ensure that new development in the city pays its proportionate share of public facilities and service improvements necessary to accommodate such development in order to promote the public health, safety and welfare; and,

WHEREAS, the City Council hereby incorporates the findings made in Municipal Code section 3.56.010, and applies them in support of the adoption of this Resolution.

NOW, THEREFORE, the City Council of the City of Morgan Hill, based upon all documents, statements and facts known to the City, does hereby resolve:

SECTION 1. Findings. The City Council hereby finds as follows:

- A. All provisions set forth above are true and correct, and are hereby incorporated herein as findings of this Council by reference.

- B. The purpose of the fees set forth herein is to finance public facilities and to reduce the impacts of development on public services and facilities caused by new development.
- C. The capital facility fees collected pursuant to this Resolution shall be used to finance only the public facilities and services described or identified in Exhibit A, attached hereto, to which the specific fee relates.
- D. There is a need for public facilities which have not yet been constructed and are required to be constructed to be consistent with the City's General Plan, and to protect the public's health, safety and welfare.
- E. The facts and evidence presented to the City Council establish that there is a reasonable relationship between the need for the described public facilities and the impacts from the type of development described to the City Council for which the corresponding fee is charged, specifically that residents of Morgan Hill are the overwhelming portion of users of the library.
- F. The facts and evidence presented to the City Council establish there is a reasonable relationship between the need of an expanded library and the growth in residential development in the City.
- G. The facts and evidence presented to the City Council establish that the cost estimates set forth are reasonable cost estimates, and the fees expected to be generated by new development will not exceed these costs.
- H. The fees set forth herein are consistent with the City's General Plan and the Council has considered the effect of the fees on the City's housing needs, as established in the Housing Element of the General Plan, and the regional housing needs.
- I. Based on the evidence submitted to the Council, the contributions made in the context of the Measure P competition are voluntary in nature and are not duplicative of the impact fees.

SECTION 2. Adoption of Fees. Therefore, development impact fees for the City of Morgan Hill are established as stated in Exhibit A, which is attached hereto and incorporated by reference.

SECTION 3. Implementation Dates. The City Council hereby orders that all increases in development impact fees be effective October 18, 2004, subject to the guidelines established below.

SECTION 4. Automatic Annual Adjustment. Each fee fixed herein shall be adjusted automatically on January 15th of each fiscal year, beginning on January 15, 2005, consistent with Section 3.56.050 of the Municipal Code.

SECTION 5. Refunds, Exemptions, Credits, and Adjustments. Refunds, exemptions, credit and adjustments to payment of impact fees shall be made and/or calculated in accordance with the applicable provisions of Chapter 3.56 of the Municipal Code.

SECTION 6. Chapter 3.56. The provisions of this resolution are subject and subordinate to the provisions of Chapter 3.56 of the Municipal Code, and shall at all times be construed and applied consistent therewith, as the same presently exists or from time to time be hereafter amended.

SECTION 7. Challenges to Resolution. Any judicial action or proceeding to attack, review, set aside or annul this resolution or any provision thereof shall be brought within one hundred and twenty (120) days of its adoption by the City Council.

SECTION 8. Exemption from CEQA. Pursuant to Title 14, California Code of Regulations, Sections 15061 and 15273(4), the City Council finds that this resolution is exempt from the California Environmental Quality Act.

SECTION 9. Severability. If any portion of this Resolution is declared invalid by a court of competent jurisdiction then it is the intent of the City Council that all other portions of the Resolution shall be severed and remain in full force and effect.

PASSED AND ADOPTED by the City Council of Morgan Hill at a Regular Meeting held on the 18th Day of August, 2004 by the following vote.

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:

🦉 CERTIFICATION 🦉

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Resolution No. , adopted by the City Council at a Regular Meeting held on August 18, 2004.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

IRMA TORREZ, City Clerk

impphin81804ch

SCHEDULE OF PROPOSED DEVELOPMENT IMPACT FEES
EFFECTIVE 8/18/04

DEVELOPMENT TYPE	UNIT		EXISTING FEES		PROPOSED FEES
SINGLE FAMILY RESIDENTIAL - Subdivision	dwelling unit	\$	228	\$	750
SINGLE FAMILY RESIDENTIAL - No Subdivision	dwelling unit	\$	228	\$	750
MULTI-FAMILY RESIDENTIAL - Subdivision	dwelling unit	\$	192	\$	614
MULTI-FAMILY RESIDENTIAL - No Subdivision	dwelling unit	\$	192	\$	614

LIBRARIES

This chapter addresses impact fees for library facilities needed to serve future development in Morgan Hill. Information on existing and planned library facilities used here is based on the Morgan Hill Community Library Building Program, dated January 2001, prepared by Kathryn Page Associates and on the Report of the Council Subcommittee on the Library Project Selection, dated June 23, 2004.

SERVICE AREA

Morgan Hill has a single branch library that is operated by the Santa Clara County Library and serves an area that includes the entire City as well as some unincorporated County territory beyond the limits of Morgan Hill. The service area used in this analysis is the entire study area, which includes the existing City and all developable land within the Urban Growth Boundary.

METHODOLOGY

This chapter calculates impact fees using the standard-based method. Standard-based fees are open-ended, meaning that they do not depend on assumptions about the ultimate limits of development in the City. The library impact fees are calculated in current dollars and should be adjusted annually to reflect changes in facility costs.

DEMAND VARIABLE AND LEVEL OF SERVICE

Virtually all library systems define the need for building space and materials as a function of the population served, and that is the case in Morgan Hill. Consequently, population is used as the demand variable for calculating impact fees in this chapter. Because the fees are population-related, they apply only to residential development.

The Morgan Hill library is owned by the City and operated by the Santa Clara County Library. Under its agreement with the County, the City is responsible for providing library facilities and the County Library is responsible for library materials, staffing, and other operating costs.

No level-of-service standard for libraries has been formally adopted by Morgan Hill. The Report of the Council Subcommittee on the Library Project Selection proposes a library of approximately 28,000 square feet .

For purposes of calculating impact fees to pay for library improvements in this report, the existing ratio of library square footage to population is used as the standard. That approach eliminates the need to address any existing deficiencies relative to the impact fee standard, and ensures that impact fees paid by future development do not subsidize the provision of library improvements for the existing community. Table 4.1 shows the relationship between existing library building area and the City's population.

EXHIBIT B

Table 4.1

Existing Ratio of Library Building Area to Population

Facility	Existing Square Feet*	Existing Population**	Square Feet Per Capita
Morgan Hill Library	13,900	35,489	0.39

* Building area from 2001 Morgan Hill Community Library Building Program

** City population estimated by California Dept. of Finance for January 1, 2004

PER-CAPITA COSTS FOR LIBRARIES

Using the existing population ratio from Table 4.1, and the estimated costs per square foot for a planned future library, the per-capita cost to provide future library space at the existing level of service can be calculated as shown in Table 4.2. Fees based on that per-capita cost will apply to all future residential development.

Table 4.2

Cost per Capita – Library Buildings

Existing Square Feet per Capita*	Cost per Square Foot**	Standard Cost Per Capita
0.39	\$582.75	\$227.27

* See Table 4.1

** Square foot cost based upon preliminary estimated cost of \$16,317,000 for proposed new library facility for purposes of determining the Library development impact fee. Total estimated costs are estimated at \$16,400,000, or slightly more. The difference of \$83,000 will be financed through other sources of funding.

IMPACT FEE CALCULATION – FEES PER UNIT OF DEVELOPMENT

In Table 4.3, below, the per-capita cost from Table 4.2 is converted into impact fees per unit of development by development type. To make that conversion, per-capita costs are multiplied by the average number of people per dwelling unit for each type of residential development.

EXHIBIT B

Table 4.3

Impact Fees per Unit of Development – Library Buildings

Development Type	Development Units	Population Per Unit**	Standard Cost Per Capita***	Impact Fee Per Capita****
Single-family Residential	DU*	3.30	\$227.27	\$750.00
Multi-family Residential	DU*	2.70	\$227.27	\$613.63

* DU = dwelling unit

** Population per dwelling unit based upon census data compiled by consultant MAXIMUS

*** See Table 4.2

**** Impact fee per unit = population per unit x standard cost per capita

PROJECTED REVENUE

Finally, the impact fees from Table 4.3 can be applied to future development to project the total revenue that will be generated by the fees through buildout, assuming that future development occurs as projected in this study. Table 4.4 on the next page shows the revenue projections for the fees calculated in this chapter. These projections represent revenue in current dollars that would be generated by impact fees on anticipated residential development within the Morgan Hill UGB.

Table 4.4

Projected Revenue – Fees for Library Buildings and Materials

Development Type	Development Units	Future Units**	Impact Fee Per Unit***	Projected Revenue****
Single-family Residential	DU*	3,430	\$750.00	\$2,571,000
Multi-family Residential	DU*	3,910	\$613.63	\$2,399,000

* DU = dwelling unit

** No. of dwelling units compiled by consultant MAXIMUS at buildout of the Urban Growth Boundary less units constructed as of January 1, 2004, according to State Department of Finance

*** See Table 4.3

**** Projected revenue = future units x impact fee per unit

It should be noted that all costs used in this report are given in current dollars. To keep pace with changing price levels, the fees calculated above should be adjusted annually for inflation.



CITY COUNCIL STAFF REPORT

MEETING DATE: AUGUST 18, 2004

Agenda Item # 31

Prepared By:

Public Works Director

Submitted By:

City Manager

WATER SUPPLY SHORTAGE OPERATIONS PLAN

RECOMMENDED ACTION(S):

1. Open/close Public Hearing
2. Adopt the attached Resolution implementing our Water Supply Shortage Operation Plan to protect public health and safety when water shortages occur.

EXECUTIVE SUMMARY: On 7/28/04 Council gave staff direction to implement our Water Supply Shortage Operations Plan. The City currently has a short term problem with supplying adequate amounts of water during peak summer demand. The primary factor causing this problem is the well-publicized perchlorate contamination which has forced the City to shut down three of its water wells, one with perchlorate levels over the Action Level, two with periodic readings at or near the Action Level. Together, these wells account for over 12% of the total supply capacity. Even with one of these wells, Dunne 2, turned on, the City will still have a difficult time meeting peak demand because of the failure of last year's well exploration to develop a new well and difficulties in securing an additional site to drill a new well.

State of California Water Code Section 350-359 authorizes local water purveyors to declare water shortage emergencies whenever it finds and determines that the ordinary demands and requirements of water consumers cannot be satisfied without depleting the water supply to the extent that there would be insufficient water for human consumption, sanitation and fire protection. A public hearing with seven days notice is required for the emergency declaration except under immediate emergency conditions.

Staff has prepared the attached Water Supply Shortage Operations Plan that establishes a three-stage protocol for the City to follow during water supply shortages. While it does focus on steps the City Government can take to reduce its own use of water and on voluntary actions from the business community, it also requires that the City will turn off the irrigation meters at the largest commercial, industrial and public water users in the community, including City parks, during times of water supply emergencies. As noted in the attached excerpts from our 2001 Urban Water Management Plan, irrigation demand during the peak summer months account for 50% of water use and can be reduced without impact to health and safety. Finally, the Plan allows for rejection of new water service applications, and discontinuance of water service to recalcitrant users, during a Stage 3 emergency.

The public will continue to be notified about our water supply condition both on Channel 17 and our City website.

The City is actively improving water supplies by constructing a new water well, adding storage capacity with a new reservoir, incorporating perchlorate removal systems on one or more of the wells, and cutting back on watering at parks throughout the City. In addition, staff is ramping up water conservation efforts and anticipates reducing water demand per capita by next summer.

Staff recommends that the Council approve the attached resolution. Staff will return to Council with a recommendation to rescind the resolution when this summer's peak demand has passed.

FISCAL IMPACT: No budget adjustment is requested at this time.

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL DECLARING THE EXISTENCE OF A WATER SHORTAGE EMERGENCY AND PROVIDING FOR SPECIFIED PROHIBITIONS OF WATER USE

WHEREAS, the City of Morgan Hill owns and operates a municipal water system; and,

WHEREAS, this water system draws 100% of its supply from a ground water aquifer; and,

WHEREAS, the aquifer in and around the City contains perchlorate due to contamination caused by Olin Corporation and Standard Fusee; and,

WHEREAS, the level of contamination has, from time to time, reached Action Levels adopted by the State of California and the Federal Environmental Protection Agency; and,

WHEREAS, when well samplings find perchlorate in the City's water, the City Council may deem it prudent and/or legally necessary to shut off a particular well until well-head treatment is installed, and/or sampling results demonstrate a reduced level of perchlorate; and,

WHEREAS, the City Council finds and determines that the ordinary demands and requirements of water consumers cannot be satisfied without depleting the water supply of the City to the extent that there would be insufficient water for human consumption, sanitation, and fire protection; and,

WHEREAS, the City Council duly considered all information presented to it at the duly-noticed public hearing held on August 18, 2004, at which consumers of the City's water supply had an opportunity to be heard to protest against the declaration and present their respective needs; and,

WHEREAS, the City Council finds and determines that because a water supply emergency exists and to preserve the health and safety of the people of this municipality, and to conserve the water supply for the greatest public benefit with particular regard to domestic use, sanitation, and fire protection, the following measures are necessary to be and are hereby placed in effect.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Morgan Hill that the following Water Supply Shortage Plan is in effect until rescinded:

SECTION 1. Water Supply Status and Actions Required.

	Supply Status	City Actions	Utility Customer Actions
Stage 1	Urgent – Water demand has exceeded optimal water supply	<ul style="list-style-type: none">- Reduce Parks Irrigation by 50%- Turn Dunne 2 Well On	
Stage 2	Critical – Water demand continues to exceed water supply and Stage 1 actions have not adequately reduced water demand	<ul style="list-style-type: none">- Parks Irrigation Remains at 50%- Turn Main 1 Well on Using Generator Power- Turn Off Sprayground at Aquatics Center	<ul style="list-style-type: none">- Water Heroes* Asked to Cut Irrigation to 50%

Stage 3	Emergency – Water demand continues to exceed water supply and Stage 1 and Stage 2 measures have not adequately reduced water demand	<ul style="list-style-type: none"> - Eliminate City Parks Irrigation - Turn Off Sprayground at Aquatics Center 	<ul style="list-style-type: none"> - City Institutes Mandatory Measures and Turns Off Irrigation Meters at Largest Water Users**

* “Water Heroes” are those commercial and industrial entities which have voluntarily agreed to implement water conservation measures in the event of a critical water supply status. A list of Water Heroes, with contact data, shall be maintained by Public Works at all times.

** ”Largest Water Users” are those commercial, industrial and public entities who comprise the top 20 users, as determined by the prior year peak month usage. A list of Largest Water Users shall be updated quarterly, and maintained by Public Works at all times.

SECTION 2. Denial of New Applications; Discontinuance of Service.

Pursuant to Water Code Section 356, the City reserves the right to deny new applications for water service during a Stage 3 status. In addition, the City reserves the right, pursuant to Water Code Section 356, to discontinue service to consumers willfully violating the restriction and requirements of this Water Supply Shortage Plan.

PASSED AND ADOPTED by the City Council of Morgan Hill at a Regular Meeting held on the 18th day of August, 2004 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

CERTIFICATION

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Resolution No. adopted by the City Council at the Regular City Council Meeting of August 18, 2004.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

IRMA TORREZ, City Clerk



CITY COUNCIL STAFF REPORT

MEETING DATE: August 18, 2004

LIBRARY PROJECT CONSTRUCTION BUDGET

Agenda Item # 32

Prepared By:

**Recreation &
Community Services
Manager**

Submitted By:

City Manager

RECOMMENDED ACTIONS:

1. Establish an alternative capital improvement project for a 28,000 sq. ft. library at the Civic Center Site with potential future expansion of 10,000 sq. ft. and a budget of \$17 million.
2. Approve the sources of funds to finance the project construction budget as outlined in exhibit A.
3. Direct the Library Commission to review and develop a program for a 28,000 sq. ft. building.
4. Seek cooperation of the County in imposing a similar development impact fee in the unincorporated area.
5. Revise the CIP to illustrate the revised funding allocations for the storm drainage projects.
6. Recommend that the City Manager analyze the alternative project management model and prepare recommendations for Council consideration on obtaining the services of a qualified construction management firm and architect and report back to Council in October 2004 when it is anticipated we will know the results of the State Funding for the larger library project.
7. Direct staff that any project model moved forward will have the controlling factor be the budget.

EXECUTIVE SUMMARY:

At the Council meeting of July 21, 2004 the Civic Center site was chosen as the site for the alternative 28,000 sq. ft. library design with future expansion of 10,000 sq. ft. A proposed budget of \$17million was developed to fund the project. Council also asked staff to provide a financing plan to include increasing the RDA allocation by \$7.0 million by shifting and/or deferring specific flood control projects from the Local Storm Drain Fund. This will require another funding source if PL566 project goes forward and may possibly be a future RDA extension project.

A report outlining the financial considerations is attached as exhibit A. Staff is also recommending that the controlling factor on the square footage of the building be determined by the approved capital budget of \$17 million.

Council is reminded that there is an existing capital improvement project in the FY04-05 budget that outlines a 40,000 sq. ft. building at the same location if state funding is granted. The results of the state library grant should be received by October 2004.

FISCAL IMPACT: Reallocation of RDA funds is required to provide the capital budget for this project.



CITY COUNCIL STAFF REPORT

MEETING DATE: August 18, 2004

APPROVAL OF THE MITIGATION MONITORING AND REPORTING PLAN FOR THE INSTITUTE GOLF COURSE

RECOMMENDED ACTION(S):

Adopt Resolution

EXECUTIVE SUMMARY:

On July 7, 2004, the City Council adopted a resolution certifying the Environmental Impact Report for the Institute Golf Course and Mathematics Conference Center located at 14800 Foothill Avenue in Morgan Hill. At the same meeting, an ordinance amending the zoning on the property from O-S, Open Space to PUD, Planning Unit Development, was introduced for first reading. Upon adoption of the Zoning Ordinance, environmental mitigation measures identified in the EIR that are not currently part of the project will be incorporated as conditions of the project approval. The second reading of the Ordinance and approval of the project is the next agenda item. Prior project approval, the City Council must first approve the attached Mitigation Monitoring and Reporting Plan (MMRP). The MMRP describes the processes for implementing identified mitigation measures, the persons responsible for implementing and/or overseeing those mitigations, the method of compliance with the mitigation and the timing for compliance with the mitigation. Cost of implementing the MMRP will be paid for by the project proponent. This item was originally scheduled for the Council's July 21st meeting and was continued to this date to allow the applicant more time to review and understand the requirements of the MMRP. Staff also met with the applicant's environmental consultant on August 2, 2004 and agreed to extend the time limits for application filing on many of the mitigation items from 60 days to 90 days from zoning approval. The overall time limit for compliance with all mitigation measures remains the same.

Approval of the Mitigation Monitoring and Reporting Plan is recommended by adoption of the attached Resolution.

FISCAL IMPACT:

No budget adjustment required.

Agenda Item # 33

Prepared By:

Planning Manager

**Approved/Submitted
By:**

City Manager

RESOLUTION NO.

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
MORGAN HILL APPROVING THE MITIGATION MONITORING
AND REPORTING PLAN FOR THE INSTITUTE GOLF COURSE
AND MATHEMATICS CONFERENCE CENTER**

WHEREAS, such request was considered by the City Council at their regular meeting of July 21, 2004 and continued to their regular meeting of August 18, 2004, at which time the City Council reviewed the Mitigation Monitoring and Reporting Plan (MMRP) for application ZA-03-03: Foothill – The Institute LLC; and

WHEREAS, testimony received at a duly-noticed public meeting along with exhibits and drawings and other materials have been considered in the review process.

**NOW, THEREFORE, THE MORGAN HILL CITY COUNCIL DOES RESOLVE AS
FOLLOWS:**

SECTION 1. An environmental impact report has been prepared for this application and has been found complete, correct and in compliance with the requirements of California Environmental Quality Act. The EIR was certified by the City Council on July 7, 2004 and Notice of Determination will be filed upon project approval.

SECTION 2. Section 15097 of the State CEQA Guidelines requires preparation of a Mitigation Monitoring and Reporting Plan as a means to ensure that the mitigation measures contained in the project EIR are implemented and completed in a timely manner.

SECTION 3 The City Council hereby approves the Mitigation Monitoring and Reporting Plan for the Institute Golf Course and Mathematics Conference Center attached hereto as Exhibit “A.”

PASSED AND ADOPTED by the City Council of Morgan Hill at a Regular Meeting held on the 18th Day of August, 2004 by the following vote.

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:

☞ CERTIFICATION ☞

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Resolution No. , adopted by the City Council at a Regular Meeting held on August 18, 2004.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

IRMA TORREZ, City Clerk

MITIGATION MONITORING AND REPORTING PLAN INSTITUTE GOLF COURSE PUD REZONING

This Mitigation Monitoring and Reporting Plan is prepared pursuant to Section 15097 of the CEQA Guidelines. It describes the processes for implementing identified mitigation measures and the persons responsible for implementing and/or overseeing those mitigations. The specific mitigation measures themselves are intended to be the mitigation measures identified in the Final EIR approved by the City Council of the City of Morgan Hill. Any inconsistencies in the scope, scale or design of the mitigation measures themselves should be resolved by adherence to the text of the Final EIR.

It is assumed that a single Site Development and Grading Plan (SDGP) will be prepared for this site that demonstrates compliance with all physical site modifications required as conditions of project approval. Preparation of that SDGP may be phased at the discretion of the City's Community Development Director. Accompanying documents for the SDGP will include detailed descriptions of ongoing activities, including site maintenance and facility operations. That documentation is referred to as the Mitigation Operations Plan.

	A	B	C	D	E
	IMPACT	MITIGATION	METHOD OF COMPLIANCE	RESPONSIBLE PARTY‡	TIMING
1	Degradation of runoff and surface water quality Impacts to habitat of downstream species	Install containment dikes around maintenance areas, and construct roofing over any area where the potential for oil, grease and fuel spillage is high. Install oil/grease separators in all catch basins in the parking area drainage system.	Show containment dikes, roof or roofs, and location of all oil/grease separators on Site Development and Grading Plan. Pay fees for City review, approval, and field verification. Verify design and installation of dikes, roof or roofs, and all oil/grease separators.	Project Proponent CDD	Submit to City by September 21 November 16 , 2004 Upon application.
2	Degradation of riparian habitat	Post signs near possible or likely access points into the riparian corridor instructing golfers that entry is forbidden. Publish and distribute rules of play that prohibit entering the riparian corridor.	Show sign locations on Site Development and Grading Plan. Provide copy of rules of play. Pay fees for City review, approval, and field verification. Verify that sign installations are at all likely access points into riparian corridor. Review rules of play for clarity	Project Proponent CDD	Submit to City by September 21 November 16 , 2004 Upon application

	A	B	C	D	E
	IMPACT	MITIGATION	METHOD OF COMPLIANCE	RESPONSIBLE PARTY‡	TIMING
			and adequacy.		
3	Loss of Burrowing Owl habitat	Comply with City of Morgan Hill Burrowing Owl Mitigation Plan	Pay fees required by MHBOMP Collect fees	Project Proponent CDD	Prior to issuance of Site Development and Grading Permit Upon application
4	Erosion and siltation from failure of existing earthwork	A geotechnical report will be prepared by a registered civil engineer or certified engineering geologist that verifies the stability of all existing grading/earthwork, except for areas previously documented (<i>i.e.</i> , berm along Foothill Avenue and berm along the southern edge of Pond G). If the existing earthwork is not found to be structurally sound and capable of resisting erosion and/or collapse, the grades will be reworked in conformance with an engineered plan.	Submit report prepared by registered civil engineer or certified engineering geologist. Pay fees for City review, approval, and field verification. Obtain grading permit to revise on-site earthwork, if required by report. Approve grading permit as appropriate. Verify that earthwork conforms to engineered report. Complete grading revisions as required by report.	Project Proponent DPW Project Proponent	Submit to City by September 21 November 16, 2004 or obtain City Engineer's finding that said report may be completed prior to permits for the new conference center building. Upon application Complete grading by July 15, 2005
5	Future grading and construction may impact wetlands.	Obtain from the U.S. Army Corps of Engineers, a determination that no jurisdictional wetlands will be impacted by the proposed grading or construction.	Submit USACE determination that no impacts to wetlands would result from proposed grading and/or construction prior to obtaining any grading or building permit. Verify that no wetlands will be impacted	Project Proponent DPW/Building Official	Prior to receiving Site Development and Grading Permit Prior to issuance grading or building permit

	A	B	C	D	E
	IMPACT	MITIGATION	METHOD OF COMPLIANCE	RESPONSIBLE PARTY‡	TIMING
6	Discharge of water from the lakes to the creek or other drainage would impact water quality	<p>Obtain an NPDES "General Permit for Discharges with Low Threat to Water Quality" from the Central Coast RWQCB for all of the on-site lakes, except where they are designed and operated to assure no discharge. The permit application will include identification of any chemicals added to the lakes for water quality control or other reasons, as provided by Application Requirement 1b (1) in the General Permit. The project proponent shall also comply with all provisions of the General Permit, including monitoring and reporting provisions established by the RWQCB.</p> <p>If any lakes are used as complete retention lakes, develop an operations plan, including supporting calculations and operating criteria, to verify that the lakes have capacity for and will be operated to contain the 100-year, 60-day runoff from the contributing drainage area.</p>	<p>Apply for, obtain, and implement and NPDES “General Permit for Discharges with Low Threat to Water Quality” from the Central Coast RWQCB for all of the on-site lakes, except where they are designed and operated to assure no discharge. Submit capacity verification for all lakes to the RWQCB for review and approval. Provide copy of General Permit to City Community Development Director.</p> <p>Review calculations and issue permit where requirements are met.</p> <p>Verify that NPDES general permit has been obtained.</p> <p>In the event that one or more lakes is to be used for complete retention, have an operations plan prepared by a licensed civil engineer. Submit to City of Morgan Hill with fees for review, approval and field verification.</p> <p>Verify that lake capacity and operations plan will avoid spillover impacts to nearby properties. If spillover does not occur, require modifications.</p>	<p>Project Proponent</p> <p>RWQCB</p> <p>CDD</p> <p>Project Proponent</p> <p>DPW</p>	<p>Permit application must be submitted by August September 1, 2004, or date that will permit the RWQCB to issue the permit for discharge to occur no later than October 31st.</p> <p>Before October 31st</p> <p>Before October 31st</p> <p>Submit to City by September 21 November 16, 2004</p> <p>Upon submittal</p>
7	Golf course construction resulted in removal of ordinance size trees	City Staff will review aerial photographs and other historic documents to estimate the number and size of trees lost. Appropriate on-site locations for new trees will be identified by a qualified botanist or arborist. Mitigation for the removal of	Retain a certified arborist or licensed landscape architect to recommend on-site locations for new tree planting and planting locations will be shown on Site Development and Grading Plan.	Project Proponent	Submit estimate prepared by arborist or landscape architect with application for Site

	A	B	C	D	E
	IMPACT	MITIGATION	METHOD OF COMPLIANCE	RESPONSIBLE PARTY‡	TIMING
		<p>non-native, ordinance species could be incorporated into the landscaping plan for the proposed development or they could also be mitigated by planting native trees in the riparian setback area; and</p> <p>Lost native trees greater than six inches in diameter will be replaced at a 5:1 ratio. Planting stock will be collected locally. Planting will be conducted from November to January using small nursery stock. The replacement trees will be planted in an environment suitable for their establishment and growth. These trees will be irrigated and maintained for a period of not less than three years. The mitigation site will be protected from future disturbance and the restoration effort will be monitored for five years, reports of which will be provided to the City.</p>	<p>Pay fees for staff review, approval and field verification.</p> <p>City staff may select certified arborist or licensed landscape architect to evaluate historic documents and to recommend new planting locations.</p> <p>Staff must review and approve tree planting plan before implementation. Trees planted prior to City approval may or may not be considered part of mitigation program.</p> <p>Provide annual update prepared by certified arborist or licensed landscape architect on status of tree growth and health to City. Pay fees for review and field verification. Trees that die during the first five years after planting must be replaced in kind, and their replacement must be reflected in the annual status report.</p>	<p>CDD</p> <p>Project Proponent</p> <p>CDD</p>	<p>Development and Grading Permit prior to February 18, 2005.</p> <p>Prior to issuance of Site Development and Grading Permit</p> <p>With issuance of Site Development and Grading Permit, and ongoing.</p>
8	The project does not have an acceptable source of potable water.	<p>Implementation of one of the following three measures would reduce the potable water supply impact to a less than significant level:</p> <ul style="list-style-type: none"> ■ Apply for and obtain approval for connection to an approved public water system, including the completion of any required environmental review for water system extension; or ■ Complete a comprehensive investigation 	<p>Depending on which form of mitigation is selected, provide the following, with fees for review, approval and field verification, to the City of Morgan Hill, as indicated:</p> <ul style="list-style-type: none"> ■ Verify that a complete application has been submitted to a public water system by September 10, 2004; or ■ Results of a domestic water supply 	Project Proponent	<p>By September 10, 2004 February 18, 2005</p>

	A	B	C	D	E
	IMPACT	MITIGATION	METHOD OF COMPLIANCE	RESPONSIBLE PARTY‡	TIMING
		<p>and analysis of the hydrogeology and groundwater quality on the site to verify that a supply of domestic water of acceptable quality (per Title 22 Drinking Water Standards) can be provided for the life of the project; or</p> <ul style="list-style-type: none"> ■ Modify the project to eliminate the need for provision of a public water supply; a "public water supply" is defined by Title 22 as "... a system for the provision of piped water to the public for human consumption that has 15 or more service connections or regularly serves at least 25 individuals daily at least 60 days out of the year." <p>If the last option is selected, mitigation of the high groundwater-nitrate concentrations will still require that the project proponent supply a safe and suitable drinking water supply that complies with all applicable drinking water quality limits; however, this could be met by the project proponent through the inclusion of a water treatment system or importation of certified potable water that will not necessarily qualify as a "public water system".</p>	<p>analysis to the City Department of Public Works and make application to the State Department of Health Services for review and approval by September 10, 2004 February 18, 2005; or</p> <ul style="list-style-type: none"> ■ A program/plan of how the project has been modified to conform to Title 22 must be provided to the Community Development Director by September 10, 2004 February 18, 2005. <p>Confirm that the mitigation method has been implemented in conformance with local and state laws and regulations.</p>	CDD	By April July 15, 2005
9	Irrigation of the site may substantially deplete groundwater resources	<p>Implementation of one of the following measures will reduce water supply impacts to a less than significant level:</p> <p>(1) Reduce the amount of irrigated turf within the golf course to a maximum of approximately 85 to 100 acres of total turf and associated landscaping area, or otherwise reduce the irrigation water demand of the existing golf course by approximately</p>	<p>Inform the Director of Community Development of the proposed mitigation method within 30 days of PUD zoning approval.</p> <p>Depending on which form of mitigation is selected, take the indicated action:</p> <p>(1) Show the areas of irrigated turf and/or other landscaping areas to be</p>	<p>Project Proponent</p> <p>Project Proponent</p>	<p>By August 23 September 17, 2004</p> <p>Complete study or implement alternative mitigation by</p>

	A	B	C	D	E
	IMPACT	MITIGATION	METHOD OF COMPLIANCE	RESPONSIBLE PARTY‡	TIMING
		<p>50 percent. Reduction of the amount of turf will also reduce the fertilizer requirements and the associated groundwater-nitrate impact of the project; or (2) A detailed groundwater investigation can be conducted to refine the mitigation (i.e., reduce on-site water use by approximately 50 percent) as described above. The scope of this investigation will need to include an inventory of existing water wells, pumping rates, water level fluctuations and gradients, aquifer characteristics (e.g., transmissivity and storativity), and recharge rates. From this information, a groundwater budget and hydraulic model shall be developed to estimate the change in groundwater conditions caused by the pumping of groundwater for golf course irrigation. The scope and the results of this investigation shall be subject to review and approval by the Santa Clara Valley Water District. Once the groundwater investigation is complete and approved by the Santa Clara Valley Water District and the City of Morgan Hill, the water usage on the project site can be adjusted based on the results of the investigation (i.e., either increased or decreased). The groundwater investigation must be completed and approved by the Santa Clara Water District and the City of Morgan Hill within 6 months to avoid interim impacts to the groundwater basin and neighboring properties from the continued excessive use of water on the project site. If the investigation is not completed and approved within 6 months, then water use on</p>	<p>removed on the Site Development and Grading Plan. Include a schedule for removal of the turf and landscaping. Provide Plan to City with fees for review, approval, and field verification. (2) <i>The City Engineer shall</i> provide a scope for the groundwater investigation prepared by a licensed civil engineer with appropriate expertise in groundwater hydrology to City and to SCVWD and RWQCB.. Obtain approval of scope and conduct investigation. After completion of study and acceptance of its results by the City and the SCVWD, adjust water use on site to reflect findings of the study. Study must be complete within six months of approval of the PUD zoning, or water use on site must be reduced by 50 percent. (3) Prepare plan to obtain and use recycled water on the site. Include agreement with recycled water supplier, engineered drawings of water supply lines, and on-site plumbing design to ensure separation of recycled water and potable water, consistent with state law and local health regulations. Another method for reducing water use must be implemented during the time required to design, construct, and implement a recycled water alternative. If a recycled water option becomes feasible in the future, it may be substituted for other methods implemented to reduce water use.</p>		<p>January 21 <i>February 18,</i> 2005</p>

	A	B	C	D	E
	IMPACT	MITIGATION	METHOD OF COMPLIANCE	RESPONSIBLE PARTY‡	TIMING
		the project site must be reduced by approximately 50 percent, as described above; or (3) Subject to further research, the use of recycled water to irrigate the golf course could be implemented.	<p>Monitor the implementation process for the selected mitigation method. Confirm with appropriate oversight agencies (SCVWD, County Health Department, recycled water supplier, City Water Utility, etc.) that implementation is occurring in a timely fashion. If timely implementation appears unlikely, inform project proponent that water use on site must be reduced by 50 percent at the end of six months after approval of the PUD zoning. Obtain well logs from SCVWD to confirm water use.</p> <p>Review scope of mitigation program and approve when acceptable. Review groundwater investigation report, if provided, and consult with City on results. Provide well logs to City for monitoring purposes.</p> <p>The City and/or the Water District may conduct additional monitoring and take corrective action, if necessary, to ensure that no groundwater depletion is occurring</p>	<p>CDD</p> <p>SCVWD</p> <p>CDD/SCVWD</p>	<p>Prior to approval of Site Development and Grading Permit</p> <p>City will consult within 30 days of receiving report</p> <p>Ongoing</p>
10	Golf course construction resulted in higher localized peak runoff in the vicinity of main entrance on Foothill Avenue.	Re-design the drainage system for the golf course to reduce the peak runoff flows to levels that are equal to or less than pre-development conditions and prevent uncontrolled runoff onto Foothill Avenue within the frontage area of the project site. This shall require redesign of the on-site drainage system to provide stormwater detention capability for the runoff from the	Provide Grading Plan, showing the redesign of the drainage system as indicated, to the City of Morgan Hill and the SCVWD. The redesign of the on-site drainage system for the project site, including the revised drainage and detention basin analysis, must be reviewed and approved by the Santa Clara Valley Water District and the City	Project Proponent	Submit to CDD by August 23 September 17, 2004

	A	B	C	D	E
	IMPACT	MITIGATION	METHOD OF COMPLIANCE	RESPONSIBLE PARTY‡	TIMING
		Maintenance drainage area in order to assure that the peak runoff flow from this area of the site does not cause concentrated uncontrolled runoff onto Foothill Avenue. Prepare a revised hydrologic analysis verifying adequate capacity for the relevant sections of the storm drain system, and an updated detention analysis for Lakes A through E.	<p>of Morgan Hill. Pay fees for review, approval and field verification</p> <p>Review the drainage plans and consult with the SCVWD. Approve grading permit when appropriate.</p> <p>Revise on-site grades as required by the approved grading permit.</p> <p>Verify that revised grading is consistent with approved plan.</p>	<p>CDD/DPW</p> <p>Project Proponent</p> <p>DPW</p>	<p>Require modifications and implementation prior to October 15, 2004</p> <p>Complete prior to October 15, 2004</p> <p>Upon completion</p>
11	Construction and continued use of the golf course has eliminated red-legged frog , California tiger salamander, and Western pond turtle habitat.	Shallow water shelves will be constructed and vegetated with native emergent vegetation around the perimeter of ponds A, B, C, D, E, F and G. Native emergent vegetation shall be established on at least 50 percent of the perimeter of each pond total linear feet of pond edge and shall be approximately 5 to 10 feet in width.	<p>Provide Site Development and Grading Plan that shows vegetated shelves in all seven ponds indicated. Submit plan to City of Morgan Hill with necessary fees for review, approval and field verification. Include proposal for pre-construction inspection and construction monitoring by qualified herpetologist to ensure that no impacts to red-legged frogs occurs.</p> <p>Review plans for conformance with identified mitigation measures. Consult with biologists if necessary. Approve plans and verify that construction is consistent with approved plans. Ensure that on-site monitors are present during construction.</p> <p>Install vegetated shelves as shown on plans.</p>	<p>Project Proponent</p> <p>CDD</p> <p>Project Proponent</p>	<p>Submit to City by September 21, 2004 February 18, 2005</p> <p>With approval of Site Development and Grading Permit</p> <p>By July 15, 2005</p>

	A	B	C	D	E
	IMPACT	MITIGATION	METHOD OF COMPLIANCE	RESPONSIBLE PARTY‡	TIMING
12	Construction and continued use of the golf course has eliminated red-legged frog , California tiger salamander, and Western pond turtle habitat.	Catch basins and other storm drain outlets shall not empty directly into any drainage leading to on-site ponds, but rather, must flow through vegetated buffers, filter strips or swales or other treatment measures deemed by the City to provide equivalent filtration, prior to entering ponds or other waterways. Catch basins and storm drain inlets must be designed with a grid cover with a grid sized to ensure that neither red-legged frogs nor tiger salamanders can fall into the drains.	<p>Prepare Site Development and Grading Plan that shows location and design of selected treatment measures for all storm drain outlets. Submit plan to City of Morgan Hill with necessary fees for review, approval and field verification.</p> <p>Review plans for conformance with identified mitigation measures. Consult with water quality experts, if necessary. Approve plans and verify that construction is consistent with approved plans.</p> <p>Install treatment systems as shown on plans.</p> <p>Verify maintenance of treatment systems annually.</p>	<p>Project Proponent</p> <p>CDD</p> <p>Project Proponent</p> <p>CDD</p>	<p>Submit application for Site Development and Grading Permit by September 21, 2004 February 18, 2005</p> <p>With approval of Site Development and Grading Permit</p> <p>By July 15, 2005</p> <p>Ongoing</p>
13	Ongoing use and maintenance of the golf course will adversely impact the quality of the riparian habitat, especially the high quality riparian habitat along the upper reaches of Corralitos Creek.	<p>A 25-foot setback from the edge of the existing lower-quality riparian habitat and a 100-foot setback from the edge of the existing higher quality riparian habitat will be established on the project site. The setback area will be established as a riparian buffer planting zone with native trees and shrubs, such as native oaks and willows.</p> <p>If encroachment within the identified setbacks is allowed by the City, mitigation for the area of each encroachment into the required setback (described below) will be required to offset the impacts to habitat quality that would result from the encroachment.</p>	<p>Submit as part of the Site Development and a separate Grading Plan Permit, a revegetation plan prepared by a qualified restoration ecologist that identifies the precise location of the riparian corridor relative to all on-site improvements, and illustrates all areas of encroachment into the riparian setback, with necessary fees for review, approval and field verification. Supplemental documents submitted must include: (1) an accurate map prepared by a civil engineer with the assistance of a qualified biologist showing the location of the riparian corridor on the site and the setbacks from low and high quality riparian</p>	Project Proponent	Submit application for Site Development and Grading Permit by September 21, 2004 February 18, 2005

	A	B	C	D	E
	IMPACT	MITIGATION	METHOD OF COMPLIANCE	RESPONSIBLE PARTY‡	TIMING
		<p>Mitigation for Reduction of Riparian Habitat Setbacks: An area of riparian habitat that is equivalent in size to the area of the encroachment(s) proposed into the setbacks, could be provided at a 1:1 ratio elsewhere along the same drainage on this site. Uses or activities within the encroachment areas within the 100-foot riparian setback will be limited to roughs and fairways to within 25 feet of the edge of the riparian habitat; unmaintained rough could be as close as 15 feet to the edge of the riparian habitat. The tees and greens that are retained in the encroachment area will be mitigated by the re-establishment and protection of riparian habitat at a 2:1 ratio (replacement:impacted) that is within three miles of the encroachment and within the Llagas Creek watershed.</p>	<p>habitat; (2) a landscape plan prepared by a restoration biologist documenting the size and species of all planting within the setback area, consistent with the criteria identified in the FEIR.</p> <p>Verify accuracy of the site plan and, in consultation with a qualified botanist or restoration biologist, approve or modify the submitted plan.</p> <p>If encroachment into the setback area is allowed by the City, an encroachment mitigation plan will be prepared by a restoration ecologist and will show the exact location of the encroachment and the exact location and type of the replacement habitat to be installed, including any proposed mitigation at off-site locations. The encroachment mitigation plan will be submitted to the City with fees for review, approval, and field verification.</p> <p>Verify accuracy of the site plan and, in consultation with a qualified botanist or restoration biologist, approve or modify the submitted plan.</p> <p>Install mitigation habitat at designated locations, consistent with approved plans. Maintain for at least five years. Provide City with annual monitoring report reflecting oversight by a restoration ecologist, verifying that plant materials that have died were replaced</p>	<p>CDD</p> <p>Project Proponent</p> <p>CDD</p> <p>Project Proponent</p>	<p>With issuance of Site Development and Grading Permit</p> <p>Submit application for Site Development and Grading Permit by September 21, 2004 February 18, 2005</p> <p>With issuance of Site Development and Grading Permit</p> <p>Install prior to July 15, 2005</p>

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	IMPACT	MITIGATION	METHOD OF COMPLIANCE	RESPONSIBLE PARTY‡	TIMING
			<p>with equivalent materials. Annual reports will be accompanied by fees for review, approval, and field verification</p> <p>Review monitoring reports and verify status of mitigation habitat.</p>	CDD	Ongoing

	A	B	C	D	E
	IMPACT	MITIGATION	METHOD OF COMPLIANCE	RESPONSIBLE PARTY‡	TIMING
14	Golf course development removed approximately one-half acre of riparian habitat.	The riparian habitat that was lost due to grading or other development activities within areas of canopy contiguous with riparian habitat will be replaced <i>along the same drainage</i> at a ratio of 3:1. Pre-grading conditions on the site would be determined by City staff through the use of historic aerial photos and other historical documentation of the project site.	<p>Determine pre-grading conditions in consultation with expert consultants as required. Inform Project Proponent of determination.</p> <p>Submit to the City a Site Development and Grading Plan that includes implementation of riparian habitat replacement, and provision for maintaining the replacement habitat for at least five years. The riparian habitat replacement plan will be prepared by a certified restoration ecologist. The plan will be submitted with necessary fees for review, approval, and field verification.</p> <p>Review plans for consistency with mitigation requirements. Consult with USFWS and consulting biologists if necessary. Approve plans and verify that construction is consistent with approved plans.</p> <p>Install riparian mitigation habitat as shown on approved plan. Maintain for at least five years. Provide City with annual monitoring report reflecting oversight by a restoration ecologist, verifying that plant materials that have died were replaced with equivalent materials. Annual reports will be accompanied by fees for review, approval, and field verification</p> <p>Review monitoring reports and verify status of mitigation habitat.</p>	<p>CDD</p> <p>Project Proponent</p> <p>CDD</p> <p>Project Proponent</p> <p>CDD</p>	<p>By August 23, 2004 November 16, 2004</p> <p>Submit application for Site Development and Grading Permit by September 21, 2004 February 18, 2005</p> <p>Ongoing</p> <p>Install by July 15 August 18, 2005; maintain for five years.</p> <p>Ongoing</p>

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	IMPACT	MITIGATION	METHOD OF COMPLIANCE	RESPONSIBLE PARTY‡	TIMING
15	25.5 acres of serpentine habitat that would have supported a number of special status plant species was eliminated by golf course construction.	<p>Protect at least 51 acres of suitable serpentine habitat by establishment of a conservation easement in perpetuity. The easement may be purchased as part of a larger mitigation bank.</p> <p>As stated in the July 15, 2003 letter from the USFWS, 35 acres of serpentine habitat located in Kirby Canyon is of exceptional quality. If after on-site verification the City of Morgan Hill agrees that due to its exceptional quality the replacement habitat is equivalent to the mitigation requirement of 51 acres of serpentine habitat, then the purchase and protection of the 35 acres in perpetuity will satisfy this mitigation measure.</p>	<p>Provide signed certification by the USFWS that the amount of habitat indicated has been purchased and suitably protected. Submit necessary fees for City review, approval, and field verification.</p> <p>Verify habitat protection and adequacy. Consult with biologist to verify that the habitat satisfies the mitigation requirement.</p>	<p>Project Proponent</p> <p>CDD</p>	<p>By August 23, February 18, 2005</p> <p>Prior to approval of Site Development and Grading Plan</p>
16	25.6 acres of red-legged frog habitat was eliminated by golf course construction.	Protect at least 51.2 acres of suitable red-legged frog habitat by establishment of a conservation easement in perpetuity. The easement February be purchased as a part of a larger mitigation bank.	<p>Provide signed certification by the USFWS that the amount of habitat indicated has been purchased and suitably protected. Submit necessary fees for City review, approval, and field verification.</p> <p>Verify habitat protection and adequacy. Consult with biologist to verify that the habitat satisfies the mitigation requirement.</p>	<p>Project Proponent</p> <p>CDD</p>	<p>By August 23, February 18, 2005</p> <p>Prior to approval of Site Development and Grading Plan</p>
17	25.6 acres of red-legged frog habitat, and California Tiger Salamander habitat, was eliminated by golf course construction and	A non-native predator management plan that operates for the life of the golf course operation will be implemented. The main components of this plan are: 1) a qualified herpetologist previously approved by USFWS will monitor (conduct nocturnal eyeshine surveys) all ponds for bullfrogs and	A complete red-legged frog on-site habitat maintenance program will be prepared and implemented by a herpetologist with red-legged frog experience. This program will include appropriate details of the non-native predator management plan. Results of	Project Proponent	Submit by September 21 November 16, 2004 and quarterly reports thereafter. Annual reports to be submitted by

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	ongoing operations.	other non-native predators four times per year, and 2) also under the supervision of the herpetologist, draw down any ponds that contain bullfrogs for two to three weeks between October 15 and November 15 late September and early October . The timing of draw down will be phased and done under the supervision of a herpetologist to ensure that red-legged frogs will continue to have available suitable wet areas. This draining of the ponds disrupts the two-year development cycle of the bullfrog and will substantially reduce or eliminate successful reproduction by bullfrogs in this area.	each quarterly survey must be submitted to the USFWS and the City within 30 days of completion. By September 30 of each year, the supervising herpetologist will provide a report to the City on the status of the habitat maintenance program, including identification of any bullfrogs found and the proposed timing for draining the ponds. Submit necessary fees for City review, approval, and field verification. Verify completeness of plan. Consult with USFWS. Review annual reports and verify that ponds are drained. Consult with RWQCB to confirm that NPDES “General Permit for Discharges with Low Threat to Water Quality” was obtained to permit ponds to be drained. Consult with City on NPDES Permit	CDD RWQCB	September 30 of each succeeding year. With issuance of Site Development and Grading Plan and annually thereafter. By September 30, 2004
18	25.6 acres of red-legged frog habitat was eliminated by golf course construction.	Formally consult with the USFWS to obtain a biological opinion that the continued operation of the golf course will not jeopardize the continued existence of the species and then be issued an incidental take permit. This formal consultation can take the form of a Section 7 (via a Federal action) or a Section 10 (Habitat Conservation Plan). Discussions with the USFWS will determine the appropriate vehicle to process this request.	Submit request for formal consultation to USFWS. Inform City of status of consultation and results of the consultation process. Confirm that formal consultation has occurred and that a permit has been issued.	Project Proponent CDD	By August 23 September 17 , 2004 Prior to issuance of Site Development and Grading Permit
19	Approximately three acres of breeding	Mitigation could consist of improvements to on-site conditions in order to provide three	Either provide a detailed plan for modifying on-site ponds to meet the	Project Proponent	Submit plan or provide

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	ponds for California tiger salamander were eliminated by golf course construction.	<p>acres of breeding habitat the meets the criteria identified in the Final EIR. In order to meet criteria for breeding ponds, sufficient upland aestivation habitat must be provided adjacent to the breeding ponds.</p> <p>Alternatively, a conservation easement for tiger salamanders could be established at a "to-be-determined" location. The final configuration of the easement (at least three acres of ponds) and associated upland aestivation habitat will depend on the final mitigation design, which will be developed in conjunction with the CDFG. This easement will be in perpetuity. A conservation easement February be purchased as a part of a larger mitigation bank. Otherwise, the owner(s) February work with a land trust, preferably in the Mt. Hamilton Range Mountains to the east, or the owner(s) could develop their own off-site mitigation easement. Any and all easements must have a legal commitment, be guaranteed management for the purposes of maintaining a California tiger salamander population, and be approved by the CDFG.</p>	<p>criteria for tiger salamander habitat identified in the Final EIR as part of the Site Development and Grading Plan, or provide signed verification from the CDFG that a conservation easement has been established for California Tiger Salamander. Submit necessary fees for City review, approval, and field verification.</p> <p>In consultation with a qualified herpetologist, verify the adequacy of the mitigation program proposed, including the adequacy of any off-site habitat, consistent with the standards identified in the Final EIR.</p>	CDD	<p>verification with application for Site Development and Grading Permit by September 21 November 16, 2004</p> <p>Prior to approval of Site Development and Grading Permit</p>
20	Past construction and ongoing operation of the golf course has caused and will continue to cause water quality impacts to water in Corralitos Creek and downstream. This	A minimum setback of either (1) 50 feet from the centerline of Corralitos Creek and all tributaries, or (2) 30 feet as measured along the ground surface to the highest anticipated water line of the creek and tributaries as jointly determined by the RWQCB and the City, is necessary to avoid significant impacts to the creek from pollutants in surface runoff.	<p>Submit a Site Development and Grading Plan showing the exact location of the minimum setback and the types of vegetation within the setback. The plan will be submitted to the City of Morgan Hill with appropriate fees for review, approval and field verification.</p> <p>Verify location, design and</p>	<p>Project Proponent</p> <p>CDD</p>	<p>Submit with Site Development and Grading Permit by September 21 November 16, 2004</p> <p>With approval of</p>

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	impacts habitat and other beneficial uses within the watershed.	<p>To reduce the water quality setback to a distance that is less than 50 feet from the centerline of the creek channels or 30 feet from the highest anticipated high water line without resulting in an impact, either the areas adjacent to the creek will be graded to flow away from the creek, or the runoff will drain to a collection system and will be filtered prior to entering the creek or ponds. Under no circumstances can the setback from the creek channels be reduced to a distance less than 30 feet from the centerline of the creek except for the fairway of the 6th hole, as described below.</p> <p>The setback from Corralitos Creek within the fairway of the 6th hole February be reduced to 20 feet on the south side of the creek and will adhere to the measures described above for reduced setbacks. The setback from the north side of the creek on the 6th hole will be at least 70 feet to compensate for the reduced setback along the south side of the creek.</p>	<p>implementation of water quality setbacks.</p> <p>If encroachment into the setback area is proposed, the Site Development and Grading Plan submitted must show the exact location and type of encroachment within the setback, and will include a design that precludes surface runoff from draining directly into the creek. This February be achieved by one or more of the following: (a) a detailed topographic survey completed by a registered civil engineer or licensed land surveyor that confirms that the existing ground surfaces within the encroachment area drain away from the creek banks; (b) a grading plan that demonstrates either that all of the on-site ground surfaces within the encroachment area will be re-graded to achieve the same performance standard as (a), or some combination of the two scenarios (a and b); or (c) runoff from the setback area will drain to a collection system and will be filtered prior to entering the creek or ponds.</p> <p>The plan will be submitted to the City with appropriate fees for review, approval, and field verification.</p> <p>Verify presence, design, and implementation of water quality setbacks from Corralitos Creek and all of its</p>	<p>Project Proponent</p> <p>CDD</p>	<p>Site Development and Grading Permit, and after construction</p> <p>Submit with Site Development and Grading Permit by September 21 November 16, 2004</p> <p>With approval of Site Development and Grading Permit</p>

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			tributaries.		
21	Degradation of runoff and surface water quality Impacts to habitat of downstream species	Monitor the grounds to control litter and other debris that could be washed into the on-site ponds or drainage (<i>i.e.</i> , weekly pavement sweeping, immediate oil spill clean-up, etc.).	Include all program measures in the SWPPP prepared for the project site. Include all appropriate measures from the Santa Clara County Non-Point Source Program Best Management Practices. Review and approve SWPPP. Verify that SWPPP has been approved by RWQCB.	Project Proponent RWQCB CDD	Prior to any further grading or construction occurring. Upon receiving complete application Prior to issuance of Site Development and Grading Permit
22	Grass clipping <i>and/or grass plugs</i> allowed to decompose in piles have caused adverse odor impacts to neighboring residents.	Grass clippings collected on the site <i>and grass plugs removed annually for turf aeration</i> must be: (1) composted on-site at a location and in a manner to be specifically addressed in the Planned Development Rezoning Permit; or (2) hauled to an off-site recycling facility; or (3) left on the golf course to compost " <i>in situ</i> ".	If alternative (1) or (2) is selected, show on the Site Development and Grading Plan where the grass clippings will be either composted or stored for collection prior to transport to an off-site recycling facility. Accompanying documentation in the Mitigation Operations Plan must provide supporting details including either: (1) the compost processing plan (including total quantities, windrow size, frequency of windrow turning, and identification of responsible personnel) or (2) method for storing grass clippings, frequency of collection, and identification of hauling contractor. If option (3) is implemented, inform the Community Development Director, who will inspect the golf course at random intervals to confirm that grass clippings	Project Proponent	Submit with application for Site Development and Grading Permit, by September 21, 2004 February 18, 2005

	A	B	C	D	E
	IMPACT	MITIGATION	METHOD OF COMPLIANCE	RESPONSIBLE PARTY‡	TIMING
24	Construction and continued use of the golf course has eliminated habitat for red-legged frog, California Tiger Salamander, and western pond turtle.	All ponds or lakes on site will have a buffer around the perimeter of at least 10 feet in width. This buffer will not be mowed or maintained with mechanized equipment, nor will any chemicals or fertilizers be applied to the surface, and it will be designed to absorb and retard surface flow and to act as a filter for the surface flow. The design and implementation of the buffers shall be subject to the approval of the City to ensure that they satisfy these criteria. Fertilizer February be applied if necessary through a below ground drip irrigation system.	<p>Submit a Site Development and Grading Plan which shows a 10-foot buffer around all of the on-site ponds/lakes. Identify exact design of the buffers, including species of planting and/or type of mulch used. Include design detail for below-ground drip irrigation system, if proposed. Include maintenance limitations in the Mitigation Operations Plan submitted with the Site Development and Grading Plan. The plans will be submitted to the City with appropriate fees for review, approval, and field verification.</p> <p>Review plans and verify that the performance standards identified for the buffer area in the FEIR are met by the proposed planting and operating plans.</p> <p>Install buffers that are consistent with those approved by the City.</p>	<p>Project Proponent</p> <p>CDD</p> <p>Project Proponent</p>	<p>Submit with application for Site Development and Grading Permit, by September 21 November 16, 2004</p> <p>With approval of Site Development and Grading Permit</p> <p>After issuance of first permit. Install by July 15, 2005</p>
25	Construction and continued use of the golf course has eliminated habitat for red-legged frog, California Tiger Salamander, and western pond turtle.	Monitoring of the on-site populations of red-legged frogs, California Tiger Salamander, and western pond turtle will be done regularly for at least five years after implementation of the measures listed in this Mitigation, Monitoring and Reporting Plan. The results of the monitoring will be submitted to the City, USFWS and CDFG.	Retain a qualified herpetologist to prepare and implement a monitoring program for all three species. The qualifications of the herpetologist must be approved by the City of Morgan Hill Community Development Director. Submit the initial monitoring program with the Mitigation Operations Plan. Provide annual updates consistent with the program. The plan and annual reports will be submitted to the City with appropriate fees for review, approval,	Project Proponent	Submit with application for Site Development and Grading Permit, by September 21 November 16, 2004

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			<p>and field verification.</p> <p>Review monitoring plan and annual reports to ensure that all measures identified in the FEIR are being implemented and that adequate protection is provided to the three species. Consult with USFWS and CDFG as appropriate.</p> <p>Implement monitoring plan as approved.</p>	<p>CDD</p> <p>Project Proponent</p>	<p>With approval of Site Development and Grading Permit.</p> <p>Immediately.</p>
26	Construction and continued use of the golf course has eliminated habitat for red-legged frog, California Tiger Salamander, and western pond turtle.	Water quality of the on-site ponds and Corralitos Creek will be sampled monthly by qualified personnel and analyzed by a certified water quality laboratory for the duration of the golf course operation to ensure that golf course run-off is not impacting breeding habitat for the California red-legged frog, California Tiger Salamander, and western pond turtle.	<p>As part of the Mitigation Operations Plan, submit a Pond and Creek Water Quality Sampling Program prepared by a qualified water quality engineer or laboratory. The plan will identify who will be responsible for taking the water quality samples, criteria for determining the sampling locations, the chain of custody for the samples, the water quality thresholds that will be used to evaluate the samples, and what actions will be taken (and when) if the thresholds are reached or exceeded. Documentation of sampling program will include exact date and time of sample and weather conditions (e.g., raining).</p> <p>Annual reports of the water quality sampling program will be submitted to the City with payment of appropriate fees for review, approval, and field verification.</p> <p>Review Sampling Program and verify</p>	<p>Project Proponent</p> <p>CDD</p>	<p>Submit with application for Site Development and Grading Permit, by September 21 November 16, 2004</p> <p>With approval of Site Development</p>

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			that it is consistent with the intent and standard of the mitigation identified in the FEIR. Review annual water quality reports and consult with appropriate experts if necessary.		and Grading Permit.
27	Ongoing use and maintenance of the golf course February contaminate groundwater below the site, on-site drainage, and the downstream reaches of Corralitos Creek, San Martin Creek and Llagas Creek with pesticides and herbicides and fertilizers.	<p>Preparation and implementation of a Chemical Application Management Plan (CHAMP). This plan shall detail the procedures to construct or reconstruct, operate, and maintain the golf course and shall provide public disclosure regarding pesticides, fertilizers and other chemicals used on the golf course, as well as methods of application and handling.</p> <p>The following provisions shall be considered for inclusion in the CHAMP and reasons satisfactory to the City's Community Development Director must be identified for a failure to include any measures:</p> <ul style="list-style-type: none"> ▪ Drought, pest, and disease resistant grass species shall be selected; ▪ Pesticides shall be handled, applied, and disposed of by a licensed (State-certified) spray technician; ▪ Only approved and legal chemicals shall be used. ▪ All county, state, and federal guidelines must be strictly adhered to regarding storage, handling, and application of pesticides; ▪ Advanced technology/monitoring equipment shall be used to insure minimal application of pesticides, herbicides, and the ability to achieve treatment goals and criteria to minimize off-site movement. ▪ Selection of less toxic, less mobile, and 	<p>Prepare and submit CHAMP to City of Morgan Hill Community Development Director, SCVWD, and RWQCB. Submit appropriate fees for review, approval and field verification by all three agencies.</p> <p>Review CHAMP and consult with USFWS, SCVWD and RWQCB. The CHAMP shall be subject to review and approval or concurrence by the City of Morgan Hill, the SCVWD, and the Central Coast RWQCB. If the RWQCB accepts regulatory authority for the CHAMP, reports to the City and SCVWD February be informational only. The City will review annual reports and conduct site visits as necessary to confirm that the project is in conformance with the CHAMP.</p> <p>Implement approved CHAMP. Submit annual reports on implementation and results of water quality monitoring to City, SCVWD and RWQCB.</p>	<p>Project Proponent</p> <p>CDD</p> <p>Project Proponent</p>	<p>Submit with application for Site Development and Grading Permit by September 21 November 16, 2004</p> <p>With approval of Site Development and Grading Permit.</p> <p>After issuance of first permit.</p>

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		<p>less persistent pesticides shall be a priority management criterion.</p> <ul style="list-style-type: none"> ■ Pesticide applications shall be carefully timed and combined with other pest management practices; ■ Pests shall be accurately identified and pesticide applications made only when necessary, using the least amount required. ■ Irrigation applications shall be consistent with turf grass evapotranspiration requirements. Over-watering shall be avoided. ■ No chemical application shall occur directly to any water body or within any of the prescribed setbacks and buffers from any water body. <p>Additionally, the CHAMP shall include a plan and commitment by the golf course owners/operators to provide on-going monitoring of water quality within the stream channels (Corralitos Creek) that flow through the project site and within the on-site lakes that have outfalls to the local drainage channel along Foothill Avenue. A monitoring and reporting program will be established by the RWQCB to enforce this requirement. At a minimum, the water quality sampling shall include monthly sampling of the golf course lakes and stream/drainage channels (above and below the project site) during the rainy season. Sampling shall include nutrients (nitrate and phosphorous) as well as all pesticides used for golf course maintenance. These data shall be reported to the City of Morgan Hill,</p>			

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	IMPACT	MITIGATION	METHOD OF COMPLIANCE	RESPONSIBLE PARTY‡	TIMING
		the Santa Clara Valley Water District, and the Central Coast RWQCB on an annual basis.			
28	On-going use and maintenance of the golf course will substantially increase existing nitrogen levels in the groundwater, which could adversely affect nearby drinking water wells, as well as the entire aquifer. Nitrogen loading impacts to downstream surface waters, including Corralitos Creek, San Martin Creek, and Llagas Creek, could also occur.	<p>Prepare a Nitrogen Control Plan (NCP). The NCP can be a component of the Chemical Application Management Plan (CHAMP). The NCP will determine the appropriate nitrogen application rates, based upon site specific soil testing and plant requirements and will account for all nitrogen application rates to the golf course, including fertilizer applications, grass clippings left in place, and nitrogen content of irrigation water. The nitrogen control plan shall include sufficient technical analysis, including monitoring data from the initial operation of the golf course, to demonstrate that the fertilizer and irrigation water applications to the golf course will not exacerbate the existing groundwater-nitrate problems in the project vicinity. Specifically, the nitrate loading from all sources shall be demonstrated to not exceed the estimated nitrate loading that would occur from pre-project conditions (19-41.2 mg/L). Nitrogen fertilizer application rates shall be adjusted to account for the nitrate levels in the groundwater-irrigation supply, based upon and verified through routine monitoring of irrigation waters. At a minimum, the monitoring shall include sampling for nitrate and total kjeldahl nitrogen no less than monthly. Application rates of fertilizers shall be</p>	<p>Prepare and submit a Nitrogen Control Plan separately or as part of a CHAMP to the City of Morgan Hill, SCVWD and RWQCB with payment of fees for review, approval and field verification. The NCP shall comply with the recommendations provided by these agencies.</p> <p>Any proposed changes to the fertilizer program shall be submitted to the same three agencies for review and approval, prior to implementation. The irrigation water monitoring program shall be in accordance with requirements established by the SCVWD and the RWQCB, and the tissue sampling will be performed in accordance with recommendations provided by SCVWD.</p> <p>Review plan and consult with RWQCB and SCVWD as appropriate. Verify that conformance with the plan will not result in increased nitrate loading, when compared with pre-project conditions. Approve NCP that meets mitigation standards identified in FEIR.</p> <p>Implement NCP approved by the City.</p>	<p>Project Proponent</p> <p>CDD</p> <p>Project Proponent</p>	<p>Submit with application for Site Development and Grading Permit by September 21 November 16, 2004</p> <p>With approval of Site Development and Grading Permit.</p> <p>After issuance of first permit.</p>

	A	B	C	D	E
	IMPACT	MITIGATION	METHOD OF COMPLIANCE	RESPONSIBLE PARTY‡	TIMING
		<p>determined based on irrigation rates and site-specific soil conditions and turf requirements. A soil and/or tissue sampling and monitoring program shall be implemented to determine appropriate application rates.</p> <p>The nitrogen fertilizer shall be slow release or less soluble form, whenever possible.</p> <p>Irrigation of the golf course shall be limited to the calculated crop evapotranspiration rate, plus mineral dilution requirement. Local weather conditions will be taken into consideration. Excessive irrigation shall be avoided. This will reduce potential leaching of nitrogen to the subsoil as well as reduce potential surface runoff from irrigation application.</p> <p>The timing of fertilizer application shall coincide with the period of greatest plant uptake and avoid periods of potential rainfall-runoff events.</p> <p>The overall amount of maintained turf shall be reduced, as needed, in order to minimize the total fertilizer requirements.</p> <p>Modify the golf course design as specified previously, including the provision of a buffer along all branches of Corralitos Creek, within which fertilizers will not be applied. Refer to California red-legged frog impact mitigation for more details on the buffer requirements. Modify the design of all sub-drains from tees and greens that discharge to Corralitos Creek to provide a minimum 25-foot vegetated buffer between the outfall point and the creek channel, or a filtration system with treatment equivalent to</p>			

	A	B	C	D	E
	IMPACT	MITIGATION	METHOD OF COMPLIANCE	RESPONSIBLE PARTY‡	TIMING
		<p>the 25-foot buffer, as approved by the City. Modify the golf course on Hole #3 to eliminate the turf covering the tributary drainage channel on the north side of Corralitos Creek near Lake G, and reestablish natural channel conditions, maintaining the previously described creek buffer (Refer to California red-legged frog impact mitigation).</p> <p>Modify the drainage system and/or golf course design in the northwestern portion of the site to eliminate the flooding of the fairway catch basins.</p> <p>Account for all sources of nitrogen application to the golf course, including fertilizer, grass clippings, and the irrigation water.</p>			
29	Occupancy of the existing restaurant building could result in impacts to human safety.	<p>The existing restaurant building is currently closed and will not be occupied until and unless the structural stability of the building is confirmed by a certified engineer.</p> <p><i>Mitigation is not required if the building is demolished and replaced with all new construction.</i></p>	<p>Submit verification of the structural stability of the restaurant building that is prepared by a certified engineer with necessary fees for review, approval, and field inspection by the City, prior to occupying the restaurant building.</p> <p>Review, approve and verify building structural stability.</p> <p>Make structural modifications shown on</p>	<p>Project Proponent</p> <p>Building Official</p> <p>Project Proponent</p>	<p>Concurrent with application for Site Development and Grading Permit by September 15, 2004 <i>or notify the Building Official by this date of intent to demolish the building and replace with all new construction.</i></p> <p>Occupancy Permit</p> <p>Prior to occupancy</p>

	A	B	C	D	E
	IMPACT	MITIGATION	METHOD OF COMPLIANCE	RESPONSIBLE PARTY‡	TIMING
			building permit application. Apply for and receive Certificate of Occupancy before any utilization of the structure.		
30	Construction and continued use of the golf course has eliminated red-legged frog, California tiger salamander, and western pond turtle habitat.	If any further grading occurs on-site for any purpose whatsoever, including implementation of required mitigation measures, silt fences, fiber rolls, or other structures will be installed to ensure that run-off from the operations does not flow directly into the on-site or downstream breeding areas. Any erosion control material must not contain plastic netting for any purpose.	A grading plan for any and all future grading will identify the specific measures that will be used to preclude contamination from grading from impacting any pond or creek segment. The plan will be submitted to the City with fees for review, approval and field verification. Verify adequacy and implementation of the plan.	Project Proponent DPW	Submit by September 21, November 16, 2004 Prior to issuance of any grading, demolition, or construction permits.
31	Construction and continued use of the golf course degraded riparian habitat.	Lighting within the riparian setback areas will not be allowed. All lighting on the site will be designed, sited and shielded to minimize light and glare impacts to wildlife within the riparian corridor.	Prepare and implement a lighting plan that addresses the mitigation standard. Submit the plan to the City of Morgan Hill Community Development Director with the necessary fees for review, approval and field verification. Verify adequacy and implementation of plan.	Project Proponent CDD	Submit with application for Site Development and Grading Permit by September 21, February 18, 2005 With approval of Site Development and Grading Permit.
32	Future construction on the project site could disturb	Demolition and/or construction will be scheduled to avoid the nesting season (January through August) to the extent	All future applications for grading, demolition, and construction plans will include provision for this mitigation	Project Proponent	Submit with application for Site Development

	A	B	C	D	E
	IMPACT	MITIGATION	METHOD OF COMPLIANCE	RESPONSIBLE PARTY‡	TIMING
	nesting raptors, which could result in the loss of eggs, young or the reproductive effort.	feasible. If it is not possible to schedule demolition and construction between August and January, then preconstruction surveys for nesting raptors will be conducted by a qualified ornithologist or wildlife biologist to ensure that no raptor nests will be disturbed during construction. This survey will be conducted no more than 14 days prior to the initiation of demolition/ construction activities during the early part of the breeding season (January through April) and no more than 30 days prior to the initiation of these activities during the late part of the breeding season (February through August). If an active raptor nest is found close enough to the construction/ demolition area to be disturbed by these activities, the ornithologist, in consultation with CDFG, will determine the extent of a construction-free buffer zone to be established around the nest.	measure, which will be submitted to the City of Morgan Hill Community Development Director with necessary fees for review, approval, and field verification. Verify the consistency of plans submitted to the City with this mitigation measure.	CDD	and Grading Permit by September 21 October 15, 2004 and prior to any future grading, demolition or construction. With approval of Site Development & Grading Permit and Ongoing
33	The renovation and/or use of the existing restaurant building or other buildings on the site could disturb nesting swallows, which could result in the loss of eggs, young or the reproductive effort.	Avoid nesting season (February 15th and September 1st) construction, if possible. If it is not possible to avoid construction during the nesting season, remove all old nests in areas that would be disrupted by the proposed work before February 15th. Once the birds return, removal must be repeated at a frequency necessary to prevent nest completion until project construction is complete. Preconstruction surveys for nesting swallows will be conducted within 48 hours prior to the start of any construction, demolition, or renovation to	All future applications for grading, demolition and construction will include provision for on-site surveys by a qualified ornithologist, the results of which will be submitted to the City of Morgan Hill Community Development Director with necessary fees for review, approval, and field verification. Ongoing removal of nests will be supervised by the ornithologist, who will verify to the City at least monthly during construction that no destruction of birds or eggs has occurred.	Project Proponent	After issuance of Site Development and Grading Permit, but Prior to beginning grading, demolition, or construction

	A	B	C	D	E
	IMPACT	MITIGATION	METHOD OF COMPLIANCE	RESPONSIBLE PARTY‡	TIMING
		ensure that swallows are not utilizing areas to be disturbed.	Review the submitted reports, confirm with field inspections as necessary during construction.	CDD	Ongoing
34	The renovation and/or use of the existing restaurant building or the removal of large trees on the site February disturb or destroy roosting pallid and/or Townsend big-eared bats.	<p>A predemolition/preconstruction survey for roosting bats will be conducted by a qualified bat biologist three to 15 days prior to any demolition or renovation of buildings, particularly those with closed areas such as an attic space, or the removal of trees 12 inches in diameter at four and one-half feet above grade. No activities that would result in disturbance to active roosts would proceed prior to the completed surveys. If no active roosts are found, then no further action would be warranted. If a maternity roost is present, a qualified bat biologist would determine the extent of construction-free zones necessary around active nurseries. If either a maternity roost or hibernacula is present, the following mitigation measures will be implemented and CDFG would also be notified of any active nurseries within the construction zone:</p> <ul style="list-style-type: none"> ■ If active maternity roosts or hibernacula are found, the project would be redesigned, if possible, to avoid the disturbance of the building or tree occupied by the roost. ■ If an active maternity roost is located and the project cannot be redesigned to avoid disturbing the occupied tree or structure, construction activities would commence either before maternity colonies form (i.e., prior to March 1st) or after young are volant (i.e., after July 31st). The disturbance-free buffer zones necessary around a maternity 	<p>All future applications for grading, demolition and construction will include provision for on-site surveys by a qualified bat biologist, the results of which will be submitted to the City of Morgan Hill Community Development Director with necessary fees for review, approval, and field verification. Included with the plans will be either: (1) verification that any structures affected have been inspected by a qualified bat biologist who found no evidence of use by bats, or (2) a permit from the CDFG.</p> <p>Issue permit for bat removal/relocation as appropriate, or require delay until relocation/removal can safely occur.</p> <p>Review the submitted reports, confirm with field inspections as necessary. Confer with CDFG to confirm MOU and permit issuance, if appropriate.</p>	<p>Project Proponent</p> <p>CDFG</p> <p>CDD</p>	<p>Prior to issuance of any grading, demolition, or construction permits for any activities that would impact buildings or trees.</p> <p>Prior to disturbing bat colonies or roosting bats.</p> <p>Ongoing</p>

	A	B	C	D	E
	IMPACT	MITIGATION	METHOD OF COMPLIANCE	RESPONSIBLE PARTY‡	TIMING
		<p>roost, as determined by a qualified bat biologist in consultation with the CDFG, will be observed during the maternity roost season (March 1st - July 31st).</p> <ul style="list-style-type: none"> ■ If a non-breeding bat hibernacula is found in a structure or tree scheduled to be razed, the individuals will be safely evicted, under the direction of a qualified bat biologist (as determined by a Memorandum of Understanding with CDFG), by opening the roosting area to allow airflow through the cavity. Demolition will then follow no later than the following day (i.e., there shall be no less than one night between initial disturbance for airflow and the demolition). This action will allow bats to leave during dark hours, thus increasing their chance of finding new roosts with a minimum of potential predation during daylight. ■ Trees with roosts that need to be removed would first be disturbed at dusk, just prior to removal that same evening, to allow bats to escape during the darker hours. 			
35	The water supply February not be sufficient to serve proposed headquarters of the American Institute of Mathematics, which February result in property loss or a hazard to human life.	Augment existing water storage facilities on the project site (e.g., construct a water tank) to meet the fire protection water supply requirements as determined by the Fire Chief. The required amount of water storage will be a function of building size and construction type.	<p>Provide specific design plans and supporting calculations that proposed fire protection systems and water storage facilities will meet fire water supply requirements as determined by the Fire Chief</p> <p>Verify that plans were approved by the Fire Chief prior to issuance of any permits to modify or replace existing structure(s).</p>	<p>Project Proponent</p> <p>Building Official</p>	<p>Prior to issuance of a building permit for new structure or substantial remodel/expansion .</p> <p>With issuance of building permit.</p>

	A	B	C	D	E
	IMPACT	MITIGATION	METHOD OF COMPLIANCE	RESPONSIBLE PARTY‡	TIMING

	A	B	C	D	E
	IMPACT	MITIGATION	METHOD OF COMPLIANCE	RESPONSIBLE PARTY‡	TIMING
36	Future grading and ongoing operation of the existing on-site drainage system February increase soil erosion on the site.	<p>The project proponent must apply for and obtain the applicable state permits under the National Pollutant Discharge Elimination System (NPDES) and Storm Water Pollution Prevention Plan (SWPPP), as required by the State Water Resources Control Board for any grading for any purpose, including implementation of required mitigation measures.</p> <p>The project proponent shall prepare an Erosion Control Plan (ECP) that includes all applicable elements of the SWPPP, and which will be submitted to the City of Morgan Hill and the Central Coast RWQCB. Erosion control measures shall be established in conformance with the City of Morgan Hill Grading Ordinance, RWQCB regulations, and local guidelines for non-point source runoff Best Management Practices for construction. The Erosion Control Plan shall include the following measures:</p> <ul style="list-style-type: none"> ■ Use of fiber rolls and temporary sedimentation basins to retain sediment on the project site; ■ Protecting all finished graded slopes from erosion through revegetation, drainage diversion, and other appropriate methods; Hydrology and Water Quality Continued Protecting any downstream storm drainage inlets from sedimentation; and ■ No construction activity that includes grading, soil movement or excavation, or which could result in any soil erosion shall 	<p>Prepare and submit SWPPP and ECP and supporting documents and revised plans necessary to meet the standards identified in the mitigation measure to the RWQCB and the City of Morgan Hill with appropriate fees for review, approval, and field verification.</p> <p>Issue NPDES Permit</p> <p>Review and verify RWQCB concurrence or approval prior to issuance of any grading or building permits or approval of plans submitted.</p> <p>Inspect project site during and after the construction period to ensure that the erosion control techniques are installed and are performing as designed, especially after major winter storm events.</p> <p>Install erosion control features identified in ECP. Maintain site during grading as required by grading permit and ECP. After completion of grading, revegetate as shown on ECP and Site Development and Grading Plan.</p> <p>Removal of sediment from natural creek channels should be accomplished during the dry season. Any activity in the natural creek channels February require a permit or waiver from the RWQCB,</p>	<p>Project Proponent</p> <p>RWQCB</p> <p>DPW and Building Official</p> <p>Project Proponent</p>	<p>Prior to any further grading or construction occurring. <i>By November 16, 2004</i></p> <p>Upon receiving complete application</p> <p>Prior to issuance of Site Development and Grading Permit</p> <p>With first permit issuance, during, and after construction.</p>

	A	B	C	D	E
	IMPACT	MITIGATION	METHOD OF COMPLIANCE	RESPONSIBLE PARTY‡	TIMING
		<p>occur during the winter rainy season (October 15th to April 15th), without written approval from the City Engineer for the City of Morgan Hill.</p> <p>During construction, the roadside drainage ditches and stream channels that border and run through the project site shall be inspected for accumulated sediment. The project proponent shall be responsible for the clearing of accumulated debris and sediment within these channels prior to each winter rain.</p> <p>Following construction, a program shall be established for insuring maintenance of culverts, drain inlets, energy dissipaters, etc., and for erosion control during maintenance grading activities in conformance with the Santa Clara County Grading Ordinance, RWQCB regulations, and Non-Point Source Program Best Management Practices.</p>	which must be obtained prior to work occurring.		
37	The proposed project February result in significant short-term noise impacts during any future construction.	<p>The following measures have been identified to mitigate temporary noise impacts to a less than significant level:</p> <ul style="list-style-type: none"> ■ Per the City of Morgan Hill Noise Ordinance, noise-generating construction activities are prohibited other than between the hours of 7:00 AM to 8:00 PM, Monday through Friday, and between the hours of 9:00 AM and 6:00 PM on Saturday. ■ Construction activities February not occur on Sundays or federal holidays. ■ Construction operations will use available 	<p>Implement all measures necessary to conform to the City of Morgan Hill Noise Ordinance, and inclusion of other noise suppression measures as required by this mitigation measure in the FEIR.</p> <p>Verify that construction includes implementation of all measures required by this mitigation measure in the FEIR</p>	<p>Project Proponent</p> <p>CDD</p>	<p>Prior to issuance of any grading or building permits.</p> <p>During construction.</p>

	A	B	C	D	E
	IMPACT	MITIGATION	METHOD OF COMPLIANCE	RESPONSIBLE PARTY‡	TIMING
		noise suppression devices and techniques, and equipment will be properly muffled and maintained.			
38	The existing structures on the project site February contain ACMs or lead based paint. Demolition or remodeling February release air-borne asbestos and/or lead dust, causing a significant impact to workers or other persons in the area.	Prior to obtaining a building permit for any future renovation or demolition of existing buildings on the project site, verification that the buildings were inspected for lead based paint and asbestos containing materials (ACMs) will be required by the City of Morgan Hill during the building permit process. If any of these contaminants are found, they would be removed in accordance with OSHA and the Department of Toxic Substances (DTSC) standards.	Inspect for lead based paint and ACMs prior to renovation or demolition of existing buildings on the project site. Provide results of surveys to Building Office concurrent with application for first building or demolition permit. Verify that any and all buildings to be demolished or modified were inspected for lead based paint and ACMs. Review removal and disposal plans, including verification of contractor's qualification where required by law.	Project Proponent Building Official	Prior to renovation or demolition of existing buildings on the project site. With issuance of building or demolition permit.
39	Construction of any remaining components of the proposed project could result in significant short term air quality impacts associated with dust generation.	The following construction practices would reduce construction related air quality impacts to a less than significant level: <ul style="list-style-type: none"> ▪ Dust-proof chutes would be used for loading construction debris onto trucks. ▪ Watering would be used to control dust generation during demolition of structures and break-up of pavement. ▪ Cover all trucks hauling demolition debris from the site. ▪ Water all active construction areas at least twice daily or use non-toxic soil binders.. Water use should be in quantities to not generate runoff. ▪ Water, cover, or use soil binders on stockpiles of debris, soil, sand or other materials that can be blown by the wind. ▪ Cover all trucks hauling soil, sand, and 	Prepare construction and grading plans. Require contractor(s) to implement BAAQMD construction measures. Verify BAAQMD measures are reflected in permit applications and are implemented during construction.	Project Proponent Building Official/DPW	Prior to issuance of any permits. Prior to issuance of any permits and during all grading and construction

	A	B	C	D	E
	IMPACT	MITIGATION	METHOD OF COMPLIANCE	RESPONSIBLE PARTY [‡]	TIMING
		<p>other loose materials or require all trucks to maintain at least two feet of freeboard.</p> <ul style="list-style-type: none"> ■ Pave, apply water three times daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking, and staging areas at construction sites. ■ Sweep daily (preferably with water sweepers) all paved access road, parking areas and staging areas at construction sites. Sweep streets daily (preferably with water sweepers) if visible soil material is carried onto adjacent public streets. Water application by sweepers should not result in runoff. ■ Hydroseed or apply non-toxic soil stabilizers to inactive construction areas. Enclose, cover, water twice daily or apply non-toxic soil binders to exposed stockpiles (dirt, sand, etc.). ■ Install sandbags or other erosion control measures to prevent silt runoff to public roadways. ■ Replant vegetation in disturbed areas as quickly as possible. 			
40	[‡] The following are included in this column: <div style="display: flex; justify-content: space-between;"> <div> CDD DPW RWQCB SCVWD USFWS USACE CDFG </div> <div> Community Development Director, City of Morgan Hill Director of Public Works, City of Morgan Hill Central Coast Regional Water Quality Control Board Santa Clara Valley Water District United States Fish and Wildlife Service United States Army Corps of Engineers California Department of Fish and Game </div> </div>				



CITY COUNCIL STAFF REPORT
MEETING DATE: AUGUST 18, 2004

Agenda Item # 34

Prepared By:

Deputy City Clerk

Approved By:

City Clerk

Submitted By:

City Manager

ADOPT ORDINANCE NO. 1687, NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING A ZONING AMENDMENT ON A 192±-ACRE SITE CHANGING THE ZONING DESIGNATION FROM OPEN SPACE (OS) TO PLANNED UNIT DEVELOPMENT (PUD) LOCATED AT 14830 FOOTHILL AVENUE BETWEEN MAPLE AVENUE AND ROBIN AVENUE. (APNS 825-29-002, 043, 044, 045 AND 825-30-007). (ZA-03-03: Foothill – The Institute)

RECOMMENDED ACTION(S):

Waive the Reading, and **Adopt** Ordinance No. 1687, New Series, and **Declare** That Said Title, Which Appears on the Public Agenda, Shall Be Determined to Have Been Read by Title and Further Reading Waived.

EXECUTIVE SUMMARY:

On July 7, 2004, the City Council Introduced Ordinance No. 1687, New Series, by the Following Roll Call Vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.

On July 21, 2004, the City Council continued the adoption of Ordinance 1687 to the meeting of August 18, 2004.

FISCAL IMPACT:

No budget adjustment required.

ORDINANCE NO. 1687, NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING A ZONING AMENDMENT ON A 192±-ACRE SITE CHANGING THE ZONING DESIGNATION FROM OPEN SPACE (OS) TO PLANNED UNIT DEVELOPMENT (PUD) LOCATED AT 14830 FOOTHILL AVENUE BETWEEN MAPLE AVENUE AND ROBIN AVENUE. (APNS 825-29-002, 043, 044, 045 AND 825-30-007) (ZA-03-03: Foothill – The Institute)

THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. The proposed zoning amendment is consistent with the Zoning Ordinance and the General Plan.

SECTION 2. The zone change is required in order to serve the public convenience, necessity and general welfare as provided in Section 18.62.050 of the Municipal Code.

SECTION 3. An environmental impact report has been prepared for this application and has been found complete, correct and in substantial compliance with the California Environmental Quality Act.

SECTION 4. The City Council hereby approves a precise development plan as contained in that certain series of documents dated March 3, 2003 on file in the Community Development Department, entitled "American Institute of Mathematics" prepared by Stotler Design Group. These documents, as amended by site and architectural review, show the exact location and dimensions of all proposed buildings, vehicle and pedestrian circulation ways, recreational amenities, parking areas, landscape areas and any other purposeful uses on the project.

SECTION 5. The City Council hereby amends the City Zoning Map as shown in attached Exhibit "A."

SECTION 6. Approval of The Institute PUD shall allow the specific uses identified in the applicant's "Use Data Table", attached hereto as Exhibit "B", and by this reference incorporated herein. Those uses shall include the following:

1. AIM Research Center (includes research facility, library, conference rooms, guest suites, lecture halls, food service, offices, pro shop, locker rooms) (59,000 square feet)
2. Golf course (128 acres)
3. Residence
4. Offices
5. Lecture hall

6. Caretaker's quarters
7. Equipment storage
8. Maintenance sheds
9. Food service
10. Guard building
11. Pro shop
12. Restrooms
13. Open Space

SECTION 7. Development of this PUD shall be in accordance with the development standards for PUDs, Chapter 18.30 of the Zoning Code, identified herein by reference in the resolution.

SECTION 8. Approval of this PUD does not include approval of "charity golf tournaments" as identified in the applicant's use table, as such use has not been evaluated for its potential environmental impacts. Such use will require amendment to the approved PUD upon further environmental review.

SECTION 9. Conditions of Approval. The Zoning Amendment hereby approved shall be subject to the conditions contained in the attached Exhibit "C."

SECTION 10. Severability. If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

SECTION 11. Effective Date; Publication. This Ordinance shall take effect from and after thirty (30) days after the date of its adoption. The City Clerk is hereby directed to publish this ordinance pursuant to §36933 of the Government Code.

The foregoing ordinance was introduced at the regular meeting of the City Council of the City of Morgan Hill held on the 7th Day of July 2004, and was finally adopted at a regular meeting of said Council on the 18th Day of August 2004, and said ordinance was duly passed and adopted in accordance with law by the following vote:

AYES:	COUNCIL MEMBERS:
NOES:	COUNCIL MEMBERS:
ABSTAIN:	COUNCIL MEMBERS:
ABSENT:	COUNCIL MEMBERS:

ATTEST:

APPROVED:

Irma Torrez, City Clerk

Dennis Kennedy, Mayor

∞ CERTIFICATE OF THE CITY CLERK ∞

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. 1687, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 18th Day of August 2004.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

IRMA TORREZ, City Clerk

EXHIBIT “C”:

Conditions of Approval, Including Mitigation Measures Not Presently Incorporated Into The Proposed Project.

- _____ 1. A geotechnical report prepared by a certified engineering geologist or civil engineer shall be submitted for review and approval by the City of Morgan Hill Director of Public Works to verify the stability of the existing earthwork on the project site, except for the berm along Foothill Avenue and the berm along the southern edge Pond G. If the existing earthwork is not found to be structurally sound and capable of resisting erosion and/or collapse, the grades shall be reworked in conformance with an engineered plan approved by the Director of Public Works.
- _____ 2. Red-legged Frog Mitigation Measure Package I
 - A. Implement USFWS Mitigation Recommendations - Implement all mitigation measures included in the USFWS letter of July 15, 2003 (Appendix C of this EIR) to reduce impacts to the California red-legged frog, as summarized below:
 1. Purchase 51 acres of currently unprotected serpentine habitat and fund its management as habitat in perpetuity.
 2. Purchase 51.2 acres of currently unprotected California red-legged frog habitat and fund its management as habitat in perpetuity.
 3. A riparian buffer with an average width of 70 feet and a minimum width of 30 feet will be planted and maintained on each side of Corralitos Creek and its tributaries, measured from the centerline of the creek.
 4. As stated in the July 15, 2003 letter from the USFWS, the 35 acres of serpentine habitat located in Kirby Canyon is of exceptional quality. If after evaluation the City of Morgan Hill agrees with the USFWS that this 35 acres of replacement habitat is equivalent to the mitigation requirement of 51 acres of serpentine habitat due to exceptional quality, and also provides 35 acres of red-legged frog habitat, then only 16.2 additional acres of currently unprotected red-legged frog habitat will need to be purchased and funded for management as habitat in perpetuity.
 - B. Manage Non-Native Predator Species - Bullfrogs and large mouth bass are non-native predators that reduce the long-term viability of a California red-legged frog population. Although only one bullfrog was detected on the project site, a non-native predator management plan that operates for the life of the golf course operation shall be implemented. The main components of this plan are to: 1) monitor all ponds for bullfrogs and other non-native predators on an annual basis, and 2) dry out any ponds that contain bullfrogs for two to three weeks in late September/early October on an annual basis. Only ponds that are found to contain one or more bullfrogs need to be drained. The timing of the draw down will be phased to ensure that California red-legged frogs will continue to have available suitable wet areas. Pond draining disrupts the two-year development cycle of the bullfrog and should substantially reduce or eliminate successful reproduction by bullfrogs.

C. Vegetated Buffers Around Ponds - All ponds on site shall have a buffer around the pond perimeter of at least 10 feet in width, which may consist of un-maintained dense grasses, planted ground cover or mulch, so long as the criteria set forth herein are satisfied. This buffer will not be mowed or maintained with mechanized equipment, nor will any chemicals or fertilizers be applied to the surface, and it will be designed to absorb and retard surface flow and to act as a filter for the surface flow. The buffers shall be subject to the approval of the City to ensure that they satisfy these criteria. Fertilizer may be applied if necessary through a below ground drip irrigation system. This buffer is significantly narrower than the buffer cited under Mitigation Package II because Mitigation Package I also provides for substantial additional off-site habitat benefits as described in USFWS letter dated July 15, 2003 that compensate for the smaller on-site buffer areas.

D. Maintain Water Quality of Breeding Ponds/Establish Vegetated Shelves Around Ponds - Water quality shall be monitored monthly for the duration of the golf course operation by qualified personnel to ensure that golf course run-off does not impact breeding habitat for the California red-legged frog. Shallow water shelves shall be constructed and vegetated with native emergent vegetation around the perimeter of ponds A, B, C, D, E, F and G. Native emergent vegetation shall be established on at least 50 percent of the total linear feet of pond edge (Exhibit ____) and shall be approximately 5 to 10 feet in width. These vegetated shelves will provide refugia and breeding habitat for the California red-legged frogs. This vegetation will also provide some biological filtering of run-off water. Catch basins and other storm drain outlets shall not empty directly into any drainages leading to these ponds, but rather, flow through vegetated buffers, filter strips, swales, or other treatment measures which provide equivalent filtration and are subject to the approval of the City, prior to entering ponds or empty downstream of any waterways associated with potential breeding habitats. If any further grading occurs, silt fences, fiber rolls, or other structures shall be installed to ensure that run-off from the operations does not flow directly into these breeding areas.

E. Water Quality Setback from Corralitos Creek - Both the USFWS and H.T. Harvey and Associates identified buffers to avoid wildlife disturbance. As stated in Section II., D., Hydrology and Water Quality of this EIR, a minimum setback is necessary to avoid significant impacts to the creek from pollutants in surface runoff. This "setback area" shall be either (1) 50 feet from the centerline of Corralitos Creek and tributaries, or (2) 30 feet as measured along the ground surface to the highest anticipated water line of the Creek and tributaries as jointly determined by the RWQCB and the City.

F. To reduce the water quality setback area required in Section 2.E without resulting in significant water quality impacts, the areas adjacent to the on-site creek channels shall drain away from the creek. The surface water shall simply drain back over the golf course as sheet flow, or it shall drain to a drainage system that drains to the creek or the internal ponds consistent with Section 2.D above. This reduction shall be implemented through either: (a) the preparation of a detailed topographic survey completed by a registered civil engineer or licensed land surveyor that confirms that the existing ground surfaces within the setback area required by Section 2.E for Corralitos Creek and all tributaries within the boundaries of the project site drain away from the creek banks, or (b) the preparation of a grading plan that demonstrates that all of the on-site ground surfaces within the setback area required by Section 2.E for all of the creek channels on the project site will be re-graded to achieve the same performance standard, or some combination of these two scenarios (a and b). The drainage pattern shall be achieved through surface grades, or a combination of surface grades and catch basin/storm drain systems. Under no circumstance

shall the setback from the creek channels be reduced below 30 feet from the centerline of the creek, except for the fairway of the 6th hole, as described below.

1. The setback from Corralitos Creek within the fairway of the 6th hole will be reduced to 20 feet on the south side of the creek and will adhere to the measures described above in Section 2.F for reduced setback areas. The setback from the north side of the creek on the 6th hole will be at least 70 feet to compensate for the reduced setback along the south side of the creek.

G. All mechanized equipment used to maintain the grounds shall only be used during the daylight hours.

H. Monitoring of the on-site population of red-legged frogs shall be done for at least five years after implementation of the program, and the results of the monitoring reported to the City of Morgan Hill and the USFWS.

_____ 3. California Tiger Salamander Mitigation Measure Package I

A. Mitigation Measure Package I as described above for the California red-legged frog shall also provide adequate mitigation for the California tiger salamander.

_____ 4. Western Pond Turtle Mitigation Measure Package I

A. Mitigation Package I as described previously for the California red-legged frog shall also provide adequate mitigation for western pond turtles.

_____ 5. Riparian Habitat

A. The riparian habitat and drainages offer different wildlife values, therefore, a 25-foot setback from the lower-quality riparian habitat, and a 100-foot setback from the higher quality riparian habitat is necessary to protect the remaining riparian corridor that is well vegetated and of higher quality, except where mitigation for reduction in the riparian setback is provided as required in paragraph G below;

B. The setback area shall be established as a riparian buffer planting zone with native trees and shrubs, such as native oaks and willows. The landscape plans shall be reviewed and approved by a qualified botanist or restoration biologist under contract with the City with services paid for by the project proponent;

C. Lighting within the setback areas should be avoided. Lighting associated with the proposed project shall be designed, sited and shielded to minimize light and glare impacts to wildlife within the riparian corridor; and

D. Human access shall be restricted within the riparian corridor. Signs explaining the sensitivity of riparian corridors will be posted along the riparian corridor particularly near possible or likely access points. The property owner will promulgate rules of play that prohibit entering the riparian corridor.

E. It should be noted that the riparian corridor setbacks described above are different than the creek setbacks described previously to protect special-status species (red-legged frog, tiger salamander,

and western pond turtle). The riparian corridor setbacks (100 feet for high quality riparian habitat and 25 feet for low quality riparian habitat) are measured from the edge of the riparian corridor. The setbacks for impacts to special-status species are measured from the centerline of the creek channels, and the water quality setbacks are measured from the highest anticipated water line of the creek channels.

F. The riparian setbacks identified above (100 feet from high quality habitat, 25 feet from poor quality habitat) are methods for reducing or avoiding habitat degradation. If encroachment within the identified setbacks is allowed by the City, mitigation (described below) shall be required to offset the impacts to habitat quality that would result from the encroachment.

G. Mitigation for Reduction of Riparian Habitat Setbacks: An area of riparian habitat that is equivalent in size to the area of the encroachment(s) proposed into the setbacks, shall be provided at a 1:1 ratio elsewhere along the same drainage. Uses or activities within the encroachment areas within the 100-foot riparian setbacks should be limited to roughs and fairways to within 25 feet of the edge of the riparian habitat; un-maintained rough may be as close as 15 feet to the edge of the riparian habitat. The tees and greens that are retained in the encroachment area will be mitigated by the re-establishment and protection of riparian habitat at a 2:1 ratio (replacement: impacted) that is within three miles of the encroachment and within the Llagas Creek watershed. Any such off-site riparian re-establishment project(s) could require subsequent CEQA review. A revegetation and maintenance plan prepared by a qualified revegetation ecologist that illustrates: (a) all planting within 100 feet of the edge of the riparian habitat, and (b) all replacement riparian habitat proposed as mitigation for riparian habitat lost and for encroachments into the riparian habitat setback, shall be submitted to and approved by the City of Morgan Hill as part of the Site, Architectural and Landscape Plan Review process.

H. Prior to approval of a grading permit for the subject property, the project proponent shall be required by the City of Morgan Hill to obtain from the U.S. Army Corps of Engineers, and provide to the City of Morgan Hill Director of Planning, a determination that no jurisdictional wetlands will be impacted by the proposed grading or construction.

_____ 6. Off-site Flooding and Drainage

A. In order to mitigate the localized flooding problems at Foothill Avenue in the vicinity of the entrance road caused by the project, the project proponent shall re-design the drainage system for the golf course to reduce the peak runoff flows to levels that are equal to or less than pre-development conditions and prevent uncontrolled runoff onto Foothill Avenue within the frontage area of the project site. This shall require the following:

1. Redesign the drainage system to provide storm water detention capability for the runoff from the Maintenance drainage area in order to assure that the peak runoff flow from this area of the site does not cause concentrated uncontrolled runoff onto Foothill Avenue; this shall include a revised hydrologic analysis verifying adequate capacity for the relevant sections of the storm drain system, and updated detention analysis for Lakes A through E;

2. The redesign of the on-site drainage system for the project site, including the revised drainage analysis and detention basin analysis, shall be subject to review and approval by the Santa Clara Valley Water District and the City of Morgan Hill.

_____ 7. Soil Erosion

A. Erosion and sedimentation impacts from the proposed project would generally result from construction on the site. It is also likely that on-going maintenance of the golf course will occasionally include excavating, drainage and grading work. Construction-related erosion and sedimentation shall be mitigated by the implementation of the following measures:

B. The project proponent shall apply for and obtain the applicable state permits under the National Pollutant Discharge Elimination System (NPDES), as required by the State Water Resources Control Board for any grading of more than one acre; this includes the preparation of a Storm Water Pollution Prevention Plan prior to any additional work necessary to reduce flooding and drainage impacts.

C. The project proponent shall prepare an Erosion Control Plan for review and approval by the City of Morgan Hill and the Central Coast RWQCB prior to any construction or grading on the site. Erosion control measures shall be established in conformance with the City of Morgan Hill Grading Ordinance, RWQCB regulations, and local guidelines for non-point source runoff Best Management Practices for construction. The Erosion Control Plan shall include the following measures:

1. use of fiber rolls and temporary sedimentation basins to retain sediment on the project site;
2. protecting all finished graded slopes from erosion through re-vegetation, drainage diversion, and other appropriate methods;
3. protecting any downstream storm drainage inlets from sedimentation; and
4. No construction activity that includes grading, soil movement or excavation, or which may result in any soil erosion shall occur during the winter rainy season (October 15th to April 15th), without written approval from the City Engineer for the City of Morgan Hill.

D. Inspection shall be conducted by City of Morgan Hill during the construction period to ensure that the erosion control techniques are performing as designed. Erosion control features shall be checked after major winter storm events.

E. Following completion of construction, the roadside drainage ditches and stream channels that border and run through the project site shall be inspected for accumulated sediment. The project proponent shall be responsible for the clearing of accumulated debris and sediment within these channels prior to each winter rain.

F. Following construction, a program shall be established for insuring maintenance of culverts, drain inlets, energy dissipaters, etc., and for erosion control during maintenance grading activities in conformance with the Santa Clara County Grading Ordinance, RWQCB regulations, and Non-Point Source Program Best Management Practices.

_____ 8. Water Quality

A. Non-Point Source Runoff Pollutants

1. Provide containment dikes around maintenance areas, and provide roofing over any area where the potential for oil, grease and fuel spillage is high;
2. Provide oil/grease separators for all catch basins within the parking area drainage system;
3. Monitor the grounds to control litter and other debris that could be washed into the on-site ponds or drainages (i.e., weekly street sweeping, oil spill clean-up, etc.);
4. Modify the golf course design along the riparian corridor of Corralitos Creek to provide the setback area required in Section 2.E that contains only native grasses and non-maintained rough for the capture and treatment of surface runoff pollutants, and a similar buffer of 10 feet around all on-site ponds/streams. The CHAMP shall include monthly monitoring for water quality and shall contain provisions for reporting of accidental chemical releases.

An alternative to providing the minimum setback area described in Section 2.E above is to ensure that the areas within such setback area drain away from the creek channels. This will allow the water quality setback to be less than the setback area required in Section 2.E without resulting in significant water quality impacts. The surface water shall simply drain back over the golf course as sheet flow, or it shall drain to a catch basin system that drains to the internal ponds. This mitigation shall be implemented through either: (a) the preparation of a detailed topographic survey completed by a registered civil engineer or licensed land surveyor that confirms that the existing ground surfaces within the Section 2.E setback area of all creek channels within the boundaries of the project site drain away from the creek banks, or (b) the preparation of a grading plan that demonstrates that all of the on-site ground surfaces within the Section 2.E setback area of all of the creek channels on the project site will be re-graded to achieve the same performance standard, or some combination of these two scenarios (a and b). The drainage pattern shall be achieved through surface grades, or a combination of surface grades and catch basin/storm drain systems. Under no circumstances shall the setback from the creek channels be reduced below 30 feet from the centerline of the creek, except for the fairway of the 6th hole, as described below.

- The setback from Corralitos Creek within the fairway of the 6th hole will be reduced to 20 feet on the south side of the creek and will adhere to the measures described above for reduced setback areas. The setback from the north side of the creek on the 6th hole will be at least 70 feet to compensate for the reduced setback along the south side of the creek.
5. Adopt and implement as part of on-going site operations, all applicable mitigation measures identified for soil erosion (refer to page 70 of the Revised Draft EIR).

B. Nitrogen Loading

1. The project proponent shall prepare a nitrogen control plan (NCP) which is based upon a determination of appropriate nitrogen application rates, based upon site specific soil testing and plant requirements. The NCP shall be a component of the Chemical Application Management Plan (CHAMP) described under the heading "Pesticides and Herbicides" below.

2. The NCP shall include annual accounting of all sources of nitrogen application rates to the golf course, including fertilizer applications, grass clippings left in place, and nitrogen content of irrigation water.
3. The Nitrogen Control Plan (NCP) shall include sufficient technical analysis, including monitoring data from the initial operation of the golf course, to demonstrate that the fertilizer and irrigation water applications to the golf course will not exacerbate the existing groundwater-nitrate problems in the project vicinity. Specifically, the nitrate loading from all sources shall be demonstrated to not exceed the estimated nitrate loading that would occur from pre-project conditions (i.e., the nitrogen loading on the whole site when it contained a 40-acre golf course, which is estimated in the EIR to be 19 to 41.2 mg/L).
4. The project proponent shall submit the Nitrogen Control Plan, including comparison to pre-project nitrate loading estimates, to the Santa Clara Valley Water District (SCVWD) and the Central Coast RWQCB for review and approval, and shall obtain and comply with recommendations provided by these agencies. Additionally, any proposed changes to the fertilizer program, not already addressed in the NCP, shall be submitted to these agencies for review and approval prior to implementation.
5. Nitrogen fertilizer application rates shall be adjusted to account for the nitrate levels in the groundwater-irrigation supply based upon and verified through routine monitoring of irrigation waters. The irrigation water monitoring program shall be in accordance with requirements established by the SCVWD and the RWQCB; at a minimum, the monitoring shall include sampling for nitrate and total kjeldahl nitrogen no less than monthly.
6. Application rates of fertilizers shall be determined based on irrigation rates and site-specific soil conditions and turf requirements. A soil and/or tissue sampling and monitoring program shall be implemented to determine appropriate application rates, in accordance with recommendations provided by the SCVWD.
7. Fertilizer application shall be consistent with the CHAMP. The nitrogen fertilizer shall be slow release or less soluble form, whenever possible.
8. Irrigation of the golf course shall be limited to the calculated crop evapotranspiration rate, plus mineral dilution requirement. Local weather conditions will be taken into consideration. Excessive irrigation shall be avoided. This will reduce potential leaching of nitrogen to the subsoil as well as reduce potential surface runoff from irrigation application.
9. The timing of fertilizer application shall coincide with the period of greatest plant uptake and avoid periods of potential rainfall-runoff events.
10. The overall amount of maintained turf shall be reduced, as needed, in order to minimize the total fertilizer requirements and achieve the goal identified in item #3 above.
11. Modify the golf course design as specified previously, including the provision of the setback area required in Section 2.E of native grasses and non-maintained rough along all branches of Corralitos Creek, within which fertilizers will not be applied.

12. The setback area referenced in Section 8.B.11 above may only be reduced in a manner that is consistent with the restrictions reflected above in the non-point source pollutants setback.
13. Modify the design of all sub-drains from tees and greens that discharge to Corralitos Creek to provide a minimum 25-foot vegetated buffer between the outfall point and the creek channel, or a filtration system with treatment equivalent to the 25 foot vegetated buffer, as approved by the City.
14. Modify the golf course on Hole #3 to eliminate the turf covering the tributary drainage channel on the north side of Corralitos Creek near Lake G, and reestablish natural channel conditions, maintaining the setback area required in Section 2.E above between the turf grass and the creek channel.
15. Modify the drainage system and/or golf course design in the northwestern portion of the site to eliminate the flooding of the fairway catch basins.

C. Pesticide and Herbicides

1. The golf course operator shall prepare a Chemical Application Management Plan (CHAMP). This plan shall detail the procedures to construct, operate and maintain the golf course and shall provide public disclosure regarding pesticides, fertilizers and other chemicals to be used on the golf course, as well as methods of application and handling. The CHAMP shall be subject to review and approval by the City of Morgan Hill and the Central Coast RWQCB. In addition to the measures incorporated into the proposed golf course layout and design, the following provisions shall be considered for inclusion in the CHAMP and reasons identified for a failure to include any measures:
 - a. Drought, pest, and disease resistant grass species shall be selected;
 - b. Pesticides shall be handled, applied, and disposed of by a licensed (State-certified) spray technician;
 - c. Only approved and legal chemicals shall be used. All county, state, and federal guidelines shall be strictly adhered to regarding storage, handling, and application of pesticides;
 - d. Advanced technology/monitoring equipment shall be used to insure minimal application of pesticides, herbicides, and fertilizers. This equipment shall be maintained and properly calibrated;
 - e. A controlled and designated area/facility shall be used for the proper mixing and loading of pesticides into application equipment. The facility shall consist of an impermeable pad with controlled and contained drainage, and shall be at least 50 feet from open ditches, ponds or other water bodies. Rinse water shall be properly stored and hauled for disposal at an approved facility.
 - f. Selection of pesticides shall be based on the ability to achieve treatment goals and criteria to minimize off-site movement. Selection of less toxic, less mobile, and less persistent pesticides shall be a priority management criterion.

- g. Pesticide applications shall be carefully timed and combined with other pest management practices; pests shall be accurately identified and pesticide applications made only when necessary, using the least amount required.
- h. Pesticides shall not be applied during the rainy season, when soil moisture is high. Applications shall be restricted prior to any anticipated late or early season storm events to preclude potential impacts from runoff.
- i. Irrigation applications shall be consistent with turf grass evapotranspiration requirements. Over-watering shall be avoided.
- j. As described previously, modify golf course design to provide enhanced vegetative buffer areas for retention of pesticide residue, including the following:
 - * Modify the golf course design along the riparian corridor of Corralitos Creek to provide the setback area required by Section 2.E above or a modified setback similar to that described under Non-Point Source Runoff Pollutants above, that contain only native grasses and non-maintained rough for the capture and treatment of surface runoff pollutants, and a similar buffer of 10 feet around all on-site ponds/streams. The CHAMP shall include monthly monitoring for water quality and shall contain provisions for reporting of accidental chemical releases.
 - * Modify the design of all sub-drains from tees and greens that discharge to Corralitos Creek, to provide a minimum 25-foot vegetated buffer (non-turf grass) between the outfall point and the creek channel or a filtration system with treatment equivalent to the 25-foot vegetated buffer, as approved by the City.
 - * Modify the golf course on Hole #3 to eliminate the turf covering the tributary drainage channel on the north side of Corralitos Creek near Lake G, and reestablish natural channel conditions, maintaining the setback area required in Section 2.E above between the turf grass and the creek channel.
- k. As described previously in Section 8.A.4 above, there is an alternative to providing the setback area required in Section 2.E above. To reduce the water quality setback to below such setbacks without resulting in significant water quality impacts, the areas adjacent to the drainage channel shall drain away from the creek. The surface water shall simply drain back over the golf course as sheet flow, or it shall drain to a catch basin system that drains to the internal ponds. This mitigation shall be implemented through either: (a) the preparation of a detailed topographic survey completed by a registered civil engineer or licensed land surveyor that confirms that the existing ground surfaces within the Section 2.E setback area of all creek channels within the boundaries of the project site drain away from the creek banks, or (b) the preparation of a grading plan that demonstrates that all of the on-site ground surfaces within the Section 2.E setback area of all of the creek channels on the project site will be re-graded to achieve the same performance standard, or some combination of these two scenarios (a and b). The drainage pattern shall be achieved through surface grades, or a combination of surface grades and catch basin/storm drain systems. Under no circumstances shall the setback from the creek channels be reduced below 30 feet from the centerline of the creek except for the fairway on the 6th hole, as described below.
 - The setback from Corralitos Creek within the fairway of the 6th hole will be reduced to 20 feet on the south side of the creek and will adhere to the measures described above for

reduced setback areas. The setback from the north side of the creek on the 6th hole will be at least 70 feet to compensate for the reduced setback along the south side of the creek.

2. Modify the drainage system and/or golf course design in the northwestern portion of the site to eliminate the flooding of the fairway catch basins.
3. Additionally, the CHAMP shall include a plan and commitment by the golf course owners/operators to provide on-going monitoring of water quality within the stream channels (Corralitos Creek) that flows through the project and within the on-site lakes that have outfalls to the local drainage channel along Foothill Avenue. A monitoring and reporting program shall be established by the RWQCB to enforce this requirement. At a minimum, the water quality sampling shall include monthly sampling of the golf course lakes and stream/drainage channels (above and below the project site) during the rainy season. Sampling shall include nutrients (nitrate and phosphorous) as well as all pesticides used for golf course maintenance. These data shall be reported to the City of Morgan Hill, the Santa Clara Valley Water District, and the Central Coast RWQCB on an annual basis.
4. The CHAMP shall be subject to review and approval or concurrence by the City of Morgan Hill, the SCVWD, and the Central Coast RWQCB (If the RWQCB accepts regulatory authority for the CHAMP, reports to the City and SCVWD may be informational only).

_____ 9. Lake Water Quality Management and Discharges

Implementation of the following measures will reduce impacts associated with lake water quality management and discharges to a less than significant level:

- A. The project proponent shall apply for and obtain an NPDES "General Permit for Discharges with Low Threat to Water Quality" from the Central Coast RWQCB for all of the on-site lakes, except where they are designed and operated to assure no discharge. This will require the submittal of standard information required by the General Permit, in addition to other information that may be required by the RWQCB.
- B. If any lakes are used as complete retention lakes, the project proponent shall develop and submit an operations plan, including supporting calculations, operating criteria, and other information as may be deemed necessary by the RWQCB, to verify that the lakes have capacity for and will be operated to contain the 100-year, 60-day runoff from the contributing drainage area.
- C. The project proponent shall also include identification of any chemicals added to the lakes for water quality control or other reasons, as provided by Application Requirement 1b (1) in the General Permit. The project proponent shall also comply with all provisions of the General Permit, including monitoring and reporting provisions established by the RWQCB.

_____ 10. Domestic Water Supply

In order to provide a suitable supply of domestic water for the project one of the following shall be done prior to issuance of building permits for the proposed Mathematics Institute:

- A. apply for and obtain approval for connection to an approved public water system, including the completion of any required environmental review for water system extension; or
- B. complete a comprehensive investigation and analysis of the hydrogeology and groundwater quality on the site to verify that a supply of domestic water of acceptable quality (per Title 22 Drinking Water Standards) can be provided for the life of the project; the results of this analysis shall be subject to review and approval by the State Department of Health Services and the Santa Clara County Health Department; or
- C. modify the project to eliminate the need for provision of a public water supply; a "public water supply" is defined by Title 22 as "... a system for the provision of piped water to the public for human consumption that has 15 or more service connections or regularly serves at least 25 individuals daily at least 60 days out of the year."
- D. If the last option is selected, mitigation of the high groundwater-nitrate concentrations will require that the project proponent supply a safe and suitable drinking water supply that complies with all applicable drinking water quality limits; however, this could be met by the project proponent through the inclusion of a water treatment system or importation of certified potable water that will not necessarily qualify as a "public water system".

_____ 11. Fire Protection Water Supply

- A. Prior to issuance of building permits for renovating the existing restaurant building for its use as the headquarters for the American Institute of Mathematics, the project proponent shall augment existing water storage facilities on the project site (e.g., construct a water tank) to meet the fire protection water supply requirements as determined by the Fire Chief. The required amount of water shall be a function of building size and construction type.

_____ 12. Groundwater Resource Depletion

The significant impact of the golf course irrigation on groundwater resources in the project vicinity shall be mitigated by implementing one of the following measures:

- A. Reduce the amount of irrigated turf within the golf course to a maximum of approximately 85 to 100 acres of total turf and associate landscaped area, or otherwise reduce the irrigation water demand of the existing golf course by approximately 50 percent. The as-built golf course currently has approximately 128 acres of irrigated turf, including tees, greens, fairways and rough, plus approximately 50 additional acres of irrigated trees and other landscaping. This is a relatively large amount of turf for an 18-hole golf course. There are examples of golf courses recently constructed in the region with as little as 50 acres of irrigated turf. Reduction of the maintained turf areas by this amount will bring the water demand into an approximate balance with the local groundwater recharge conditions, thereby reducing the potential effect on groundwater levels by an equivalent amount. Reduction of the amount of turf will also reduce the fertilizer requirements and the associated groundwater-nitrate impact of the project.
- B. While the information currently available indicates that the project could substantially impact groundwater levels, a detailed groundwater investigation shall be used to refine the mitigation (i.e., reduce on-site water use by approximately 50 percent) described above. The project proponent shall complete a much more detailed groundwater investigation to confirm that the

proposed pumping of groundwater for golf course irrigation would not cause a significant decline in the water table at neighboring properties. The scope of this investigation will need to include an inventory of existing water wells, pumping rates, water level fluctuations and gradients, aquifer characteristics (e.g., transmissivity and storativity), and recharge rates. From this information, a groundwater budget and hydraulic model shall be developed to estimate the change in groundwater conditions caused by the pumping of groundwater for golf course irrigation. The scope of work and the results of this investigation shall be subject to review and approval by the Santa Clara Valley Water District.

Once the groundwater investigation is complete and approved by the Santa Clara Valley Water District and the City of Morgan Hill, the water usage on the project site shall be adjusted based on the results of the investigation (i.e., either increased or decreased). The groundwater investigation must be completed and approved by the Santa Clara Water District and the City of Morgan Hill within 6 months to avoid interim impacts to the groundwater basin and neighboring properties from the continued excessive use of water on the project site. If the investigation is not completed and approved within 6 months, then water use on the project site shall be reduced by approximately 50 percent, as described above. The Applicant may be required by the City and/or the Water District in the future to conduct additional monitoring and to take corrective action, if necessary, to ensure that no groundwater depletion is occurring.

C. Subject to further research, the use of recycled water to irrigate the golf course could be implemented to reduce the use of groundwater.

____ 13. According to the City of Morgan Hill Noise Ordinance, noise-generating construction activities are defined as including, but are not limited to, excavation, grading, paving, demolition, construction, alteration or repair of any building site, street, or highway, delivery or removal of construction material to a site or movement of construction materials on a site. These construction activities are prohibited other than between the hours of 7:00 AM to 8:00 PM, Monday through Friday, and between the hours of 9:00 AM and 6:00 PM on Saturday. Construction activities may not occur on Sundays or federal holidays.

____ 14. Construction operations shall use available noise suppression devices and techniques, and equipment shall be properly muffled and maintained.

____ 15. The BAAQMD has prepared a list of feasible construction dust control measures that can reduce construction impacts to a level that is less than significant. The following construction practices shall reduce construction related air quality impacts to a less than significant level.

A. Dust-proof chutes shall be used for loading construction debris onto trucks.

B. Watering shall be used to control dust generation during demolition of structures and break-up of pavement.

C. Cover all trucks hauling demolition debris from the site.

D. Water all active construction areas at least twice daily.

E. Watering or covering of stockpiles of debris, soil, sand or other materials that can be blown by the wind.

- F. Cover all trucks hauling soil, sand, and other loose materials or require all trucks to maintain at least two feet of freeboard.
- G. Pave, apply water three times daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking, and staging areas at construction sites.
- H. Sweep daily (preferably with water sweepers) all paved access road, parking areas and staging areas at construction sites.
- I. Sweep streets daily (preferably with water sweepers) if visible soil material is carried onto adjacent public streets.
- J. Hydroseed or apply non-toxic soil stabilizers to inactive construction areas.
- K. enclose, cover, water twice daily or apply non-toxic soil binders to exposed stockpiles (dirt, sand, etc.).
- L. Install sandbags or other erosion control measures to prevent silt runoff to public roadways.
- M. Replant vegetation in disturbed areas as quickly as possible.

_____ 16. Odor Impacts

- A. Existing and future grass clippings shall be collected and either: (1) composted on-site at a location and in a manner to be specifically addressed in the Planned Development Rezoning Permit; or (2) hauled to an off-site recycling facility; or (3) left on the golf course to compost "in situ".

_____ 17. Special-Status Plant Species (Serpentine) Habitat

A. Since most of the impacts have already occurred, establishment of a conservation easement is the only mitigation measure available that could reduce this impact to a less than significant level. As recommended by the USFWS in the letter of July 15, 2003 (Appendix C of this EIR), the following mitigation measure shall reduce project impacts to serpentine habitat to a less than significant level:

- 1. In order to replace the serpentine habitat lost with equivalent habitat, purchase 51 acres of currently unprotected serpentine habitat and fund its management as habitat in perpetuity.

_____ 18. Riparian Areas

A. Since the construction impacts within the riparian corridor have already occurred, the only mitigation available is to replace the riparian habitat removed. The following mitigation measure was identified to mitigate impacts to the riparian habitat removed:

- 1. The riparian habitat that was lost due to grading or other development activities within areas of canopy contiguous with riparian habitat shall be replaced along this same drainage at a ratio of 3:1. Pre-grading conditions on the site shall be determined by City Staff through the use of historic aerial photos and other historical documentation of the project site.

_____ 19. Ordinance-Size Trees

A. Since most of the impacts have already occurred, replacement is the only mitigation measure available that would reduce this impact to a less than significant level. The numerous trees planted on the golf course are primarily non-native, and do not offer replacement habitat values.

B. The following steps shall be taken to mitigate for lost ordinance-size trees:

1. Appropriate on-site locations for new trees shall be identified by a qualified botanist or arborist. The proposed riparian setback area offers a potentially suitable site for the planting of native tree species. Mitigation for the removal of non-native, ordinance species shall be incorporated into the landscaping plan for the proposed development or they shall also be mitigated for with native plantings in the riparian setback area; and
2. Lost native trees greater than six inches in diameter shall be replaced at a 5:1 ratio*. This ratio shall be necessary to compensate for replacement trees that do not survive, and for the habitat values lost while replaced trees are maturing. Planting stock shall be collected locally. Planting shall be conducted from November to January using small nursery stock. The replacement trees shall be installed in an environment suitable for their establishment and growth. These trees shall be irrigated and maintained for a period of not less than three years. The mitigation site shall be protected from future disturbance and the restoration effort shall be monitored for five years. Annual status reports shall be provided to the Director of Planning. The size of the trees lost shall be estimated by City Staff from aerial photographs and other historic documentation. The equivalent number and type of trees removed and the number, type, size, and health of the new trees planted on the project site will be evaluated to determine if the equivalent value of the trees removed is fully mitigated by the trees planted on the project site. If the value of the trees removed from the project site is not fully mitigated by the trees planted, additional native species trees will be planted on the project site, as determined by City Staff.

_____ 20. California Red-legged Frog Habitat/Aquatic Habitat

Appropriate mitigation shall include either improving the potential on-site breeding habitat (Mitigation measures 1, 2, 3 and 5 below) or providing an off-site conservation easement for California red-legged frogs (Mitigation measures 2, 3, 4 and 5 below).

- A. Mitigation 1 - Compensation by Establishment of On-site Breeding Areas - The project shall restore and expand the presumed former breeding pond and broaden the band of setbacks for the creek and the potential breeding ponds. The broadening of the setback surrounding the creek and potential breeding ponds will increase the potential for adult and juvenile red-legged frogs to disperse and forage along a corridor between the creek and the southeastern and the westernmost ponds. Because approximately three acres of potential breeding ponds were lost, at least nine acres of breeding ponds shall be restored for red-legged frog habitat. Potential breeding habitat shall include emergent aquatic vegetation to provide substrates for egg laying and associated upland habitat for foraging. The upland habitat shall be a buffer (an undisturbed area that protects habitat from human activities) of 200 feet that is maintained from the water's edge of individual breeding ponds and from the centerline of the creek. No human disturbance, landscaping, irrigation, turf areas or lighting shall be placed within the buffer area. No vehicles or other equipment including power lawn mowers shall operate within the buffer zone. Additionally, if any nocturnal maintenance activities occur on the site, an exclusion fence shall be

installed and maintained to avoid "take" of red-legged frogs from vehicular activities. Additionally, Mitigation 2 and 3 shall be implemented.

B. Mitigation 2 - Manage Non-Native Predator Species (primarily the bullfrog) - Bullfrogs are non-native predators that reduce the long-term viability of a red-legged frog population. Although no bullfrogs or other non-native predators were detected on the project site, a non-native predator management plan that operates for the life of the golf course operation shall be implemented. The main components of this plan are to: 1) monitor all ponds for bullfrogs and other non-native predators on an annual basis, and 2) draw down any ponds that contain bullfrogs for two to three weeks in late September/early October. The timing of draw down shall be phased to ensure that red-legged frogs will continue to have available suitable wet areas. This draining of the ponds disrupts the two-year development cycle of the bullfrog and should substantially reduce or eliminate successful reproduction by bullfrogs in this area.

C. Mitigation 3 - Maintain Water Quality of Breeding Ponds - Water quality shall be monitored for the duration of the golf course operation by qualified personnel to ensure that golf course run-off does not impact breeding habitat for the red-legged frog. The water quality parameters to be sampled shall be in accordance with monitoring requirements established by the Regional Water Quality Control Board and, at a minimum, shall include nitrate, ammonia, total kjeldahl nitrogen, total dissolved solids, oil and grease (parking lot runoff only), and all landscaping chemicals used by the golf course. Emergent vegetation (e.g. cattails) established around pond edges will provide at least some biological filtering of run-off water and reduce the inflow of this run-off. All parking lot drains and all subdrains beneath tees and greens that discharge into the ponds shall include filtration or other treatment measures to minimize the potential for direct discharge of golf course chemicals or other surface runoff contaminants.

D. Mitigation 4 - Provide a Conservation Easement - The project proponent shall establish a conservation easement for red-legged frogs at a "to-be-determined" location. The final configuration of the easement (at least 51.2 acres of suitable red-legged frog habitat) will depend on the final mitigation design, which will be developed in conjunction with the USFWS. This easement will be in perpetuity. A conservation easement may be purchased as a part of a larger mitigation bank.

As stated in the July 15, 2003 letter from the USFWS, the 35 acres of serpentine habitat located in Kirby Canyon is of exceptional quality. If after evaluation the City of Morgan Hill agrees with the USFWS that this 35 acres of replacement habitat is equivalent to the mitigation requirement of 51 acres of serpentine habitat due to exceptional quality, and also provides 35 acres of red-legged frog habitat, then only 16.2 additional acres of currently unprotected red-legged frog habitat will need to be purchased and funded for management as habitat in perpetuity.

E. Mitigation 5 - Compliance with Resource Agencies - The project proponent shall formally consult with the USFWS to obtain a biological opinion that the continued operation of the golf course will not jeopardize the continued existence of the species and then be issued an incidental take permit. This formal consultation can take the form of a Section 7 (via a Federal action) or a Section 10 (Habitat Conservation Plan). Discussions with the USFWS will determine the appropriate vehicle to process this request.

____ 21. California Tiger Salamander Aestivation/Breeding Habitat

Appropriate mitigation shall include either improving the potential on-site aestivation habitat and the breeding habitat on the westernmost ponds (Mitigation 1, 2, and 3) in order to expand the existing tiger salamander population or providing an off-site conservation easement for California tiger salamanders (Mitigation 4).

- A. Mitigation 1 - Compensation by Establishment of On-site Breeding and Aestivation Habitat - The project shall restore and expand the presumed former breeding ponds and broaden the band of setbacks for the potential breeding ponds. The broadening of the setback surrounding the potential breeding ponds will increase the potential for adult and juvenile tiger salamanders to disperse and forage around the breeding ponds. Because approximately three acres of potential breeding ponds were lost, at least three acres of breeding ponds shall be restored for tiger salamander breeding habitat. Potential upland aestivation habitat shall be provided around the breeding ponds. The upland habitat shall be a buffer (an undisturbed area that protects habitat from human activities) of 200 feet that is maintained from the water's edge of individual breeding ponds. Additionally, large woody debris and/or stones shall be placed within this buffer to encourage burrow construction by ground squirrels and/or gophers. No rodenticides shall be used to kill any ground squirrels and/or gophers in the buffer area. No human disturbance, landscaping, irrigation, turf areas or lighting shall be placed within the buffer area. No vehicles or other equipment including lawn mowers shall operate within the buffer zone. If any nocturnal maintenance activities occur on the site, an exclusion fence shall be installed and maintained to avoid "take" of tiger salamanders from vehicular activities. Additionally, Mitigation 2 and 3 shall be implemented.
- B. Mitigation 2 - Manage Non-Native Predator Species (primarily the bullfrog) - Bullfrogs are non-native predators that reduce the long-term viability of a California tiger salamander population. Although no bullfrogs or other non-native predators were detected on the project site, a non-native predator management plan that operates for the life of the golf course operation shall be implemented. The main components of this plan are to: 1) monitor all ponds for bullfrogs and other non-native predators on an annual basis, and 2) draw down any ponds that contain bullfrogs for two to three weeks in late September/early October. The timing of drawn down will be phased to ensure that tiger salamanders will continue to have available suitable wet areas. This draining of the ponds disrupts the two-year development cycle of the bullfrog and should substantially reduce or eliminate successful reproduction by bullfrogs on the site.
- C. Mitigation 3 - Maintain Water Quality of Breeding Ponds - Water quality shall be monitored for the duration of the golf course operation by qualified personnel to ensure that golf course run-off does not impact breeding habitat for the California tiger salamander. The water quality parameters to be sampled shall be in accordance with monitoring requirements established by the Regional Water Quality Control Board and, at a minimum, shall include nitrate, ammonia, total kjeldahl nitrogen, total dissolved solids, oil and grease (parking lot runoff only), and all landscaping chemicals used by the golf course. Emergent vegetation (e.g. cattails) established around pond edges will provide at least some biological filtering of run-off water and reduce the inflow of this run-off. All parking lot drains and all subdrains beneath tees and greens that discharge into the ponds shall include filtration or other treatment measures to minimize the potential for direct discharge of golf course chemicals or other surface runoff contaminants.
- D. Mitigation 4 - Conservation Easement for California Tiger Salamanders - The project proponent shall establish a conservation easement for tiger salamanders at a "to-be-determined" location. The final configuration of the easement (at least three acres of ponds) and associated upland

aestivation habitat will depend on the final mitigation design, which will be developed in conjunction with the CDFG. This easement will be in perpetuity. A conservation easement may be purchased as a part of a larger mitigation bank. Otherwise, the owner(s) may work with a land trust, preferably in the Mt. Hamilton Range Mountains to the east, or the owner(s) shall develop their own off-site mitigation easement. Any and all easements shall have a legal commitment, be guaranteed management for the purposes of maintaining a California tiger salamander population, and be approved by the CDFG. Consideration will be given to crediting on-site ponds for tiger salamander habitat, if they meet the relevant criteria.

- ____ 22. A "non-renewal notice" shall be filed by the City for the existing Williamson Act contract that is currently in force on the project site.

Other Conditions:

- ____ 23. The golf course shall be open for private use only from April 16th to September 30th and play on the golf course shall be limited to a maximum of 36 rounds of golf per day, seven days per week, from sunrise to sunset. Players shall not be allowed to use golf carts. Golf carts shall be used on the golf course for maintenance purposes only.
- ____ 24. As part of the Site, Architectural and Landscape application, and prior to the issuance of building permits for this project, the applicant shall submit a detailed landscape plan for review by the City. It shall be in the City's purview to determine if the row of trees along Foothill Avenue must be removed or diminished, or alternatively, that the trees are an appropriate part of the overall use of the site and can remain.
- ____ 25. The existing drainage conduit located at Maple Avenue (identified in Exhibit 1 attached hereto) shall be redesigned and resized to prevent localized flooding, to the satisfaction of the City Engineer, prior to the issuance of building permits.
- ____ 26. The existing culverts located at the private driveways downstream from the project site (identified in Exhibit 2 attached hereto) shall be resized to prevent localized flooding to the properties to the satisfaction of the City Engineer, prior to the issuance of building permits. The applicant shall coordinate all improvements with the County of Santa Clara and shall subject to property owner permission to enter the adjacent property.
- ____ 27. Fertilizers and other agricultural chemicals shall be applied by means other than through the irrigation spray system to avoid generation of noxious odors to neighboring residences.
- ____ 28. Any water tank required for fire suppression purposes shall be sited at a low elevation on the project site, to minimize impacts to the area view shed. Such tank shall be located adjacent to the main building areas and shall be visually screened by trees and other vegetation, to the satisfaction of the City.

- _____ 29. Defense and indemnity. Applicant agrees to defend and indemnify and hold City, its officers, agents, employees, officials and representatives free and harmless from and against any and all claims, losses, damages, injuries, costs and liabilities arising from any suit for damages or for equitable or injunctive relief which is filed against City by reason of its approval of Planned Unit Development (PUD) Zoning Amendment for this project. In addition, applicant shall pay all pre-tender litigation costs incurred on behalf of the City including City's attorney's fees and all other litigation costs and expenses, including expert witnesses, required to defend against any lawsuit brought as a result of City's approval or approvals, but shall not be required to pay any litigation from the City. However, applicant shall continue to pay reasonable internal City administrative costs, including but not limited to staff time and expense spent on the litigation, after tender is accepted. The undersigned hereby represents that they are fully empowered by the applicant as their agent to agree to provide the indemnification, defense and hold harmless obligations, and the signature below represents the unconditional agreement by applicant to be bound by such conditions.
- _____ 30. Allowance of continued operation of the golf course shall be dependent on the applicant's timely compliance with the requirements of the MMRP and prompt payments of all fees necessary to defray the City's expense in reviewing and monitoring compliance with the MMRP, including fees to cover City staff time, out of pocket expenses and administrative charges, and the fees of any consultants retained by the City to evaluate compliance with the MMRP or to oversee implementation of the MMRP in whole or in part. The City may from time to time require payment of estimated fees and expenses in advance of the performance of work by City Staff or consultants, and shall otherwise submit invoices to the Applicant for such fees and expenses as they are incurred or on a periodic basis. Such invoices shall be paid by the Applicant within 30 days of the date of the invoice. The Applicant's failure to pay invoices in a timely manner may result in the City's suspension of the Applicant's right to operate the golf course, the delay or denial of permits sought by the Applicant for construction of additional facilities contemplated in the PUD zoning, and/or revocation of the zoning approval.

⌘AFFIDAVIT⌘

I, **STEPHEN SORENSON**, on behalf of the applicant, hereby agree to accept and abide by the terms and conditions specified in Ordinance No. 1687, New Series and Exhibit C, "Conditions of Approval, Including Mitigation Measures Not Presently Incorporated into the Proposed Project". I represent and warrant that I have the authority on behalf of the applicant to execute this document.

STEPHEN SORENSON, On Behalf of Applicant

Date: _____



CITY COUNCIL STAFF REPORT

MEETING DATE: August 18, 2004

AN ORDINANCE OF THE CITY OF MORGAN HILL AMENDING THE MORGAN HILL MUNICIPAL CODE TO PROHIBIT THE POSSESSION OF IMITATION FIREARMS ON PUBLIC PROPERTY

RECOMMENDED ACTION(S):

1. Waive in full the first and second reading of the ordinance.
2. Introduce the Ordinance by title only.

EXECUTIVE SUMMARY:

Several months ago, Morgan Hill Police Officers were summoned to a school and nearby park where juveniles were found to be in possession of "airsoft" BB guns which strongly resembled real guns. This seemingly harmless incident was dangerous because several citizens were very frightened, the responding police officers had to drive quickly through heavy afternoon traffic to get to the scene and upon arrival had to draw their weapons to protect themselves and to gain compliance from the youngsters.

Following this incident Staff determined that this incident was identical to others that have occurred throughout California and other parts of the nation where persons, sometimes juveniles, armed with imitation or replica firearms have been confronted by law enforcement officers. In some cases these persons have been shot and injured or killed by officers because the weapon displayed was so similar in appearance to a real firearm.

Existing laws prevent the brandishing of an imitation firearm at any time and prohibit imitation firearms at schools. Additionally, existing laws prevent these guns from being fired in the City, and other laws prevent those persons under 18 years of age from possessing some of these guns. No current laws exist however to prevent persons from simply possessing these types of guns in public. And, though State of California legislation that would prohibit these types of guns in public has been proposed it has not been approved at this time.

After careful review of this issue Staff believes these imitation firearms present an unnecessary danger to the community when they are displayed in public and recommends that the proposed ordinance to prohibit them in public areas be approved by City Council. It is further recommended that Morgan Hill City Ordinance 9.04.010 which prohibits the discharge of certain weapons be modified slightly to add language that updates the way in which these newer "airsoft" weapons operate.

FISCAL IMPACT:

None.

(See attached memorandums for additional details)

Agenda Item # 35

Prepared By:

(Title)

Approved By:

(Department Director)

Submitted By:

City Manager



CITY OF MORGAN HILL POLICE DEPARTMENT

INTEROFFICE MEMORANDUM

Date: August 11, 2004

To: J. Edward Tewes, City Manager

From: Bruce Cumming, Interim Police Chief

Subject: Imitation Firearms-New Ordinance Proposal

Several months ago, on April 26, 2004 shortly before 5 P.M, police officers were summoned to Jackson Oaks School when frightened citizens called 911 reporting men wearing war-like dress in possession of guns. All available police officers responded to this serious call "Code 3" (red lights and sirens). When the police arrived at the school and a nearby park they found four juveniles ages 13 to 16 armed with handguns and an assault rifle in an area where numerous children were about to play baseball. The police officers drew their weapons to include rifles, commanded the juveniles to get on the ground and took them into custody without further incident. Fortunately this event ended safely in that the juveniles involved followed the instructions of the police and one of the officers saw what looked to be a toy-like handgun and alerted his fellow officers.

This incident could have ended tragically because these juveniles were in possession of imitation firearms commonly called "air soft" BB or pellet guns which fire a plastic projectile using air pressure, spring action or electrical charge. Moreover, it is virtually impossible to discern these guns from real firearms as they are designed to copy the looks of real weapons. These imitation firearms present an unnecessary danger to the community especially when they are displayed in public. Citizens may be frightened when they see these weapons, they will call the police and the police will respond under emergency conditions and then the police will have to confront at significant risk those persons displaying these weapons. Throughout California and the nation there have been numerous situations in cities where police officers have had to confront persons possessing "air soft" type imitation firearms. In several situations these people have been shot by the police because they believed the gun was real.

There are some laws and ordinances that somewhat control these “airsoft” imitation firearms. For example 417.4 of the Penal Code prohibits the brandishing of an imitation firearm and Penal Code 626.10 prohibits these types of weapons at schools. In addition, Morgan Hill City Ordinance section 9.04 .010 prevents certain weapons from being fired in the city limits which includes some but not all “airsoft” type weapons. As part of this proposal it is recommended that this city ordinance be modified to add “mechanical spring action” and “electrical charge” devices to the current list of discharge methods listed in section 9.04.010. There are no laws however that currently exist to prohibit the possession or display of imitation firearms in public. Senate bill 1858 has been drafted to prohibit this activity but it has not been approved at this time.

This proposal is not intended to prevent legitimate use of toy guns by youngsters. Cap pistols, squirt guns and other play guns that are brightly colored and do not fire a missile or bullet or do not resemble real guns would be unaffected by this ordinance because it is unlikely they would be mistaken for real guns by the public or law enforcement officers.

As noted in this memorandum I believe that these imitation firearms present an unnecessary danger to the community when they are possessed or displayed in public and there are currently no laws prohibiting this specific activity. I recommend that the attached ordinance drafted by the City Attorney be presented and approved by the City Council. And further, that Morgan Hill Municipal Code section 9.04.010 be modified to include and prohibit “mechanical spring action” and “electrical charge” devices.

ORDINANCE NO. , NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AMENDING SECTION 9.04.010(A) (Discharge-Permit Required-Fee) OF CHAPTER 9.04 (WEAPONS) AND ENACTING CHAPTER 9.06 (IMITATION WEAPONS) OF TITLE 9 (PUBLIC PEACE, MORALS AND WELFARE) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL REGARDING PROHIBITION OF IMITATION WEAPONS

WHEREAS, imitation firearms commonly called “air soft” pellet guns which fire a plastic projectile using air pressure, spring action or electrical charge are readily available to the public, including juveniles, through retail and internet merchants; and,

WHEREAS, on April 26, 2004, police officers were summoned to Jackson Oaks School when frightened citizens called 911 reporting men wearing war-like dress in possession of guns; and,

WHEREAS, all available police officers responded to this serious call “Code 3” (red lights and sirens), and upon their arrival at the school they found four juveniles apparently armed with handguns and an assault rifle in close proximity to a field where numerous children were about to play baseball; and,

WHEREAS, the police officers withheld fire because one of the officers noticed that one of the weapons appeared to be an imitation firearm; and,

WHEREAS, this event ended safely due to the quick observation of the officer and because the juveniles followed the instructions of the police to get on the ground and surrender the weapons; and,

WHEREAS, this incident could have ended tragically because it is virtually impossible to discern imitation firearms from the real firearms they are designed to copy; and,

WHEREAS, imitation firearms present an unnecessary danger to the community, especially when they are displayed in public as citizens may panic when they see these weapons, thereby calling police communications; and,

WHEREAS, police will respond to reports of potential weapons under emergency conditions and will have to confront at significant risk those persons displaying these weapons; and,

WHEREAS, throughout California there have been numerous situations in cities where police officers have had to confront persons possessing “air soft” type imitation weapons, and in several situations these people have been shot by the police because they believed the gun was real; and,

WHEREAS, the City of Morgan Hill currently possesses no restriction on the possession of

these firearms in public; and,

WHEREAS, in order to avert a public tragedy similar to those experienced by other cities, and nearly experienced by the City of Morgan Hill on April 26, 2004, the City Council believes that a City Ordinance is necessary to preserve the public health, safety and welfare.

NOW THEREFORE, IN CONSIDERATION OF THE FOREGOING, THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY ORDAIN AND ENACT AS FOLLOWS:

Section 1. Chapter 9.06 (Imitation Weapons) of Title 9 (Public Peace, Morals and Welfare) is hereby added to read as follows:

Chapter 9.06

IMITATION WEAPONS

9.06.010 Possession of Imitation Weapons Unlawful.

It shall be unlawful for any person to possess or display an imitation firearm on public property, in the public right of way, or in an area viewable from public property or the public right of way.

9.06.020 Imitation Weapon – Definition.

For the purposes of this section, an imitation firearm means a replica of a firearm that is so substantially similar in visual characteristics to an existing firearm as to lead a reasonable person to believe that the replica is a firearm that could be operational.

9.06.030 Imitation Weapon – Confiscation and Destruction.

Any imitation firearm that is possessed or displayed in violation of this Chapter may be impounded and held as evidence, returned to the person from whom it was taken or destroyed as outlined in Section 9.04.030.

9.06.040 Imitation Weapon – Exception.

This section shall not apply to the possession or display of an imitation firearm as authorized in writing by the Police Chief.

Section 2. Section 9.04.10(A) (Discharge-Permit Required-Fee) of Chapter 9.06 (Weapons) of Title 9 (Public Peace, Morals and Welfare) is hereby amended to read as follows:

9.04.010 Discharge-Permit Required-Fee

A. No person shall discharge in the city, outside of a licensed shooting range, any instrument or device of any kind, character or description which discharges, propels or hurls bullets, missiles of any kind to any distance from such instrument or device by means of elastic force, air pressure, vacuum, explosive force, **mechanical spring action or electrical charge**, without first having applied for and obtained a written permit therefore from the chief of police.

Section 3. **Severability.** Should any provision of this ordinance be deemed unconstitutional or unenforceable by a court of competent jurisdiction, such provision shall be severed from the ordinance, and such severance shall not affect the remainder of the ordinance.

Section 4. **Effective Date; Posting.** This ordinance shall take effect thirty (30) days after its second reading. This ordinance shall be posted at City Hall.

The foregoing ordinance was introduced at the regular meeting of the City Council of the City of Morgan Hill held on the 18th Day of August 2004, and was finally adopted at a regular meeting of said Council on the 1st Day of September 2004, and said ordinance was duly passed and adopted in accordance with law by the following vote:

AYES: **COUNCIL MEMBERS:**
NOES: **COUNCIL MEMBERS:**
ABSTAIN: **COUNCIL MEMBERS:**
ABSENT: **COUNCIL MEMBERS:**

ATTEST:

APPROVED:

Irma Torrez, City Clerk

Dennis Kennedy, Mayor

∞ CERTIFICATE OF THE CITY CLERK ∞

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. , New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 1st Day of September 2004.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

IRMA TORREZ, City Clerk



CITY COUNCIL STAFF REPORT

MEETING DATE: August 18, 2004

Agenda Item # 36

Prepared By:

Associate Planner

Approved By:

Planning Manager

Submitted By:

City Manager

Comments for the High-Speed Bullet Train

RECOMMENDED ACTION(S): Review and provide comments to the California High-Speed Rail Authority for the Draft Environmental Impact Report for the proposed high-speed bullet train.

EXECUTIVE SUMMARY: Staff is seeking comments regarding potential routes, stations, and other potential impacts to the City. The California High Speed Rail Authority proposes a high-speed train system (HST) for intercity travel in California. The HST expects to carry 68 million passengers in the year 2020, capable of carrying passengers at a speed of 200 mph on a fully grade-separated track. The authority estimates that a high-speed train could carry passengers from downtown San Jose to the Burbank Airport in 2 hours. It is anticipated that the system would provide 86 trains a day, with 64 of the trains running between northern and southern California.

The Authority has two main routes for the HST, one through the Pacheco Pass and one through the Diablo Range north of Morgan Hill. The Pacheco Pass includes two main routes: One route stopping in Gilroy near the CalTrain station and using the CalTrain right-of-way through Morgan Hill to San Jose. A second route bypassing Gilroy, connecting to the CalTrain right-of-way north of Gilroy, with a HST station near the Morgan Hill CalTrain station. Authority staff recommends dropping the Morgan Hill station alternative.

The second main route is north of Morgan Hill through the Diablo Mountains (Direct Tunnel Route). From San Jose, this route would use the CalTrain corridor south to near Highway 85, turning east through the Diablo range towards the Central Valley. Three routes through the Diablo range are being considered, two of the routes going through Henry Coe State Park. The Direct Tunnel route would require tunneling up to 31 miles long. Authority staff recommends the Direct Tunnel route because it is faster than the Pacheco Pass route and it would attract more riders. However, the Pacheco Pass route would serve a larger population and it would be less expensive to build.

Staff has identified the following potential impacts to the City:

- Right-of-Way acquisition. The bullet train will require 5'-70' of additional right-of-way acquisition along the CalTrain corridor. The Draft EIR does not discuss the location of the right-of-way acquisition or the impact the acquisitions would have on adjacent land uses. The Draft EIR states that the Monterey Highway corridor north of Cochrane would need to be realigned to the east and reconstructed.
- Noise. Additional trains on the tracks will cause more noise. Further, if sections of the HST right-of-way are elevated, the noise impact will be greater than grade level right-of-way.
- Downtown HST station. The General Plan encourages transit stops in the downtown. If a station were located downtown, it would be a two or three story aerial structure. Potential impacts include visual, traffic, parking, growth inducing impacts and impacts to adjacent land use.
- Visual/Aesthetic. If sections of the HST is elevated there is potential for visual/aesthetic impacts throughout the City.
- Historic/Cultural. The existing CalTrain right-of-way is adjacent to existing and potential significant cultural sites. The realignment of Monterey Highway has a high probability to impact potential and existing cultural sites in Madrone. In addition, the realignment of Monterey Highway will impact the historic Walnut Trees along Monterey Road, which the County has listed in their historic inventory.
- Biological/Natural Resources. Depending on the location of the future HST right-of-way acquisition, there could be a taking of burrowing owl habitat as well as impact to significant trees.

The Planning Commission reviewed the Draft EIR at their August 10 meeting. Staff will provide Commission comments at the meeting.

FISCAL IMPACT: No budget adjustment required.



CITY COUNCIL STAFF REPORT

MEETING DATE: AUGUST 18, 2004

Agenda Item # 37

Prepared By:

**Council Services &
Records Manager**

Submitted By:

City Manager

APPOINTMENT TO THE CITY'S 2006 CENTENNIAL PLANNING STEERING COMMITTEE

RECOMMENDED ACTION(S):

- 1) Confirm appointments to the City's 2006 Centennial Steering Committee;
- 2) Appoint a two-member Council subcommittee to assist said committee; and
- 3) Direct the City Manager to appoint a city staff member to work with the steering committee, if deemed appropriate.

EXECUTIVE SUMMARY:

At the Council's June 23, 2004 meeting, the Council agreed to establish a 2006-Centennial Celebration Steering Committee. The Council agreed to a seven-member steering committee and that each council member would appoint one individual, with the Mayor appointing three individuals to the steering committee.

At the July 28, 2004 Council meeting, Council members raised questions regarding the expectations of the steering committee. Mayor Kennedy recommended the following:

- The steering committee to begin the planning process that would include an organization, similar to that of the Independence Day Inc., who would plan a year long centennial celebration
- The organization to have different groups conducting different parts in the preparation of the centennial celebration, inviting all segments of the community (e.g., Chamber of Commerce, churches, Sister Cities Committee, service clubs such as the Rotary, Lions Club, Kiwanis).
- Invite an advisory committee of the Historical Society founding members to assist.
- Steering committee to return to the Council in December 2004; identifying the organizational structure, timeline, and recommended budget for the centennial celebration.

Based on a better understanding of what would be expected of the steering committee, Mayor Kennedy requested that Council members contact City Clerk Torrez by August 11 and provide her with names of recommended appointees to said committee.

Mayor Kennedy announced that his recommended appointees would be: Brad Jones, Marilyn Libers and Jennifer Tate. Council Member Chang announced that her recommended appointee would be Lorraine Welk. However, she requested the right to be able to appoint a different individual should Ms. Welk decide not to undertake this assignment. Council Member Tate indicated that he would recommend the appointment of Janie Knopf. Council Member Carr has recommended that Ellie Weston be appointed. Mayor Pro Tempore Sellers will announce his recommended appointment at the August 18 Council meeting.

The Mayor has recommended that a two-member Council subcommittee be appointed to work with the steering committee. It would be appropriate to identify the two Council members who would be working with the steering committee at this time. He is further recommending that a City staff member be appointed as a liaison to assist the Council subcommittee and Centennial Planning Steering Committee. It is being recommended that the City Manager be directed to appoint a City staff member to serve as the liaison to the steering committee, if deemed appropriate.

FISCAL IMPACT: No fiscal impacts at this time. Should the Council decide to earmark funding for the Centennial celebration at this time or at a future date, there is \$11,400 earmarked in the Fiscal Year 2004-05 Community Promotion's budget for community activities. Typically, the Council co-sponsors the Independence Day, Inc. (IDI) Fourth of July activities, Youth Empowered for Success, the Taste of Morgan Hill, and use of the Community & Cultural Center by non profit groups from this account. Staff will note that in Fiscal Year 2003-04, the Council approved \$14,836.28 in funding to IDI alone. As an alternative, the Council can allocate funding, as needed, from the General Fund reserves.